TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, ~~1955~~ 57

No. ~~661~~ ~~3~~ 4

CLAUDE MACK LIGHTFOOT, PETITIONER,

vs.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 3, 1956

CERTIORARI GRANTED MARCH 26, 1956

In the

United States Court of Appeals

For the Seventh Circuit

No. 11470

UNITED STATES OF AMERICA,
Plaintiff-Appellant,

vs.

CLAUDE MACK LIGHTFOOT,
Defendant-Appellant.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

INDEX.

Placita 1
Statement pursuant to Rule 10(b) 2
Indictment, filed May 14, 1954 3
Plea and Arraignment, entered June 28, 1954 4
Motion to Dismiss Indictment, filed Aug. 13, 1954 5
Supplemental Motion to Dismiss Indictment, filed Sept. 22, 1954 6
Order denying Motion to Dismiss, entered Nov. 1, 1954 7

TRANSCRIPT OF PROCEEDINGS.

Colloquy 10, 25, 29, 177, 222, 373, 468, 586

WITNESSES FOR PLAINTIFF.

Testimony of:

Anderson, W. C. 22
Blackwell, Lee 28
Brzek, John 452
Cooper, James Charles 438
Cummings, William Garfield 434
Czarnowski, Anton J. 315, 382
Felt, Edwin H. 23
Herron, Garfield 32
Lautner, John 130, 203, 260
Levin, Lawrence 16
Meyer, Frank S. 55
McCarthy, Charles W. 20
Ondrejka, Michael John 300
Skinner, Shirley Rochelle 447

Instructions to Jury 571
Motion for Judgment at Close of Plaintiff's Case, filed Jan. 20, 1955 602
Motion for Directed Verdict at Close of Plaintiff's Case 603
Motion for Judgment at Close of all Evidence ... 604
Motion for Directed Verdict at Close of all Evidence 605
Order continuing Motions, entered Jan. 20, 1955 606
Motion for New Trial, filed Jan. 26, 1955 607
Motion in Arrest of Judgment 608
Verdict, filed Jan. 26, 1955 609
Order Amending Motion for New Trial, entered Jan. 28, 1955 610
Judgment, entered Feb. 15, 1955 610
Notice of Appeal, filed Feb. 24, 1955 612
Order Extending Time 614
Statement of Points 615
Alternate Proposed Instruction No. 4 616
Proposed Instruction No. 4 617
Proposed Instruction No. 23 618
Clerk's Certificate 618

Proceedings in the United States Court of Appeals for the Seventh Circuit 619
Opinion, Duffy, C. J. 619
Judgment 635
Clerk's certificate ..... (omitted in printing) 635
Order allowing certiorari 635

1 PLEAS had at a regular term of the United States District Court for the Eastern Division of the Northern District of Illinois, begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of February (it being the 7th day thereof) in the Year of Our Lord One Thousand Nine Hundred Fifty-Five and of the Independence of the United States of America, the 179th Year.

Present:

Honorable John P. Barnes, District Judge.
Honorable William H. Holly, District Judge.
Honorable Philip L. Sullivan, District Judge.
Honorable Michael L. Igoe, District Judge.
Honorable William J. Campbell, District Judge.
Honorable Walter J. La Buy, District Judge.
Honorable J. Sam Perry, District Judge.
Honorable Win G. Knoch, District Judge.
Honorable Julius J. Hoffman, District Judge.
Roy H. Johnson, Clerk.
William W. Kipp, Sr., Marshal.

Tuesday, February 15, 1955.

Court met pursuant to adjournment.

Present: Honorable Philip L. Sullivan, Trial Judge.

2 UNITED STATES OF AMERICA.

Court of Appeals for the Seventh Circuit.

Claude Mack Lightfoot, *Defendant-Appellant,* vs. United States of America, *Plaintiff-Appellee.*	District Court No. 54 CR 262.

STATEMENT PURSUANT TO RULE 10(b) OF UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

1. The defendant-appellant is Claude Mack Lightfoot and the plaintiff-appellee is the United States of America.

2. The defendant was indicted at Chicago, Illinois on May 14, 1954 and charged with violation of the membership section of the "Smith Act", being Section 2385 of Title 18, United States Code. He was arrested and arraigned and a plea of "Not Guilty" was entered on June 28, 1954.

3. The defendant was released on bail of $30,000 pending trial and bail in the same amount has been continued pending Appeal.

4. Motions to dismiss the indictment were denied on November 1, 1954, and motion for Bill of Particulars was denied on November 15, 1954.

5. The trial commenced on January 10, 1955 before the Honorable Philip L. Sullivan, District Judge and a jury.

6. The jury returned a verdict of "Guilty" on January 26, 1955 and the defendant was sentenced on February 15, 1955 to five (5) years imprisonment and a fine of Five Thousand ($5,000.00) Dollars.

7. Notice of Appeal was filed on February 24, 1955.

Dated this March 21, 1955.

Claude Mack Lightfoot,
Appellant, pro se.

Received a copy of the above this 21st day of March, 1955.

R. Tieken,
U. S. District Attorney,
By James Haisons,
Asst. U. S. Attorney.

3 **In the United States District Court,**
For the Northern District of Illinois,
Eastern Division.

United States of America,
vs.
Claude Mack Lightfoot. } **No. 54 CR 262.**

Be It Remembered, that on to wit, the 14th day of May, 1954, the above-entitled action was commenced by the filing of the Indictment in the Office of the Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, in words and figures following, to wit:

4 In the United States District Court.
* * (Caption—54-Cr-262) * *

The May 1954 Grand Jury charges:

1. That from on or about July 26, 1945, and continuously thereafter, up to and including the date of the filing of this indictment, the Communist Party of the United States has at all times been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

2. That from on or about July 26, 1945, and continuously thereafter, up to and including the date of the filing of this indictment, in the Northern District of Illinois and elsewhere, Claude Mack Lightfoot, the defendant herein has been a member of said Communist Party of the United States of America, the defendant well knowing during all of said period that said Communist Party of the United States of America was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about

such overthrow by force and violence as speedily as circumstances would permit.

In violation of Section 10, Title 18, United States Code (1946 Ed.), being Section 2 of the Smith Act (54 Stat. 671), while said section of said Act remained effective and thereafter in violation of Section 2385, Title 18, United States Code (1948 Ed.).

True Bill,
William C. White,
Foreman,
Robert Tieken,
United States Attorney.

5 And afterwards, to wit, on the 28th day of June, 1954, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

6 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr-262) * *

On motion of the United States by the United States Attorney it is

Ordered that the suppressed Indictment herein be and the same is hereby released from the order suppressing same comes the United States by the United States Attorney comes also the defendant Claude Mack Lightfoot in his own proper person and by his counsel the defendant is given a copy of the Indictment by the United States Attorney in open Court and being arraigned upon said indictment pleads not guilty thereto and enters his motion to reduce bail and the Court having heard the arguments of counsel and being fully advised it is

Further Ordered that said motion be and the same is hereby denied without prejudice.

7 And afterwards on, to wit, the 13th day of August, 1954 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Motion to Dismiss Indictment in words and figures following, to wit:

8 IN THE UNITED STATES DISTRICT COURT.
(Caption—54-Cr-262)

MOTION TO DISMISS INDICTMENT.

Now comes Claude Mack Lightfoot, by Pearl M. Hart and Nelson M. Willis, his attorneys, and moves the court to dismiss the indictment herein for the following reasons:

1. The grand jury which it is alleged voted the indictment was not selected, drawn or summoned in accordance with law.

2. The indictment pretends to allege a violation of law which on its face is barred by the statute of limitations.

3. The indictment pretends to charge an offense against a law which was no longer law at a time when the defendant might have been charged, were such charge not barred by the statute of limitations.

4. The indictment does not state facts sufficient to constitute an offense against the United States.

5. The indictment is vague, uncertain, indefinite and ambiguous, and does not contain the elements of any offense against the United States.

6. The indictment does not meet the requirements of the fifth and sixth amendments to the Constitution of the United States.

7. The indictment does not state facts sufficient to constitute a description of the offense which is purported or attempted to be charged.

8. The indictment charges no crime against the defendant individually.

9. The law under which the indictment is alleged to be drawn is unconstitutional and void because it is in
9 derogation of the first amendment to the Constitution of the United States.

10. The indictment as drawn contains an alleged charge which is no part of Section 2385 Title 18, United States Code, (1948 Ed.).

11. The indictment attempts to charge the defendant,

an individual, with an intent, which does not constitute a crime.

12. The indictment charges no offense because it is in conflict with, and has been nullified and in effect repealed by Public Law 831, cited as The Internal Security Act of 1950, Section 4 (f) which says: "Neither the holding of office nor membership in any communist organization shall constitute per se a violation of sub section (a) or subsection (c) of this section or any other criminal statute." (Emphasis supplied.)

Respectfully submitted,
Pearl M. Hart,
Nelson M. Willis,
Attorneys for Defendant.

Pearl M. Hart,
30 N. La Salle St.,
Chicago 2, Ill. ST 2-3213,
Nelson M. Willis,
35 S. Dearborn St.,
Chicago, Ill., AN 3-3296.

10 And afterwards on, to wit, the 22nd day of September, 1954 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Supplemental Motion to Dismiss Indictment in words and figures following, to wit:

11 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—54-Cr-262) • •

SUPPLEMENTAL MOTION TO DISMISS INDICTMENT.

Now Comes Claude Mack Lightfoot, by his attorneys, and moves the court to dismiss the indictment for the following reasons in addition to the reasons set forth in the motion to dismiss indictment heretofore filed by him:

1. Section 2 of the Smith Act (54 Stat. 67) and Section 2385, Title 18, United States Code, as amended and supplemented by sections 2, 3, and 4 of the Communist Control Act of 1954 (Public Law 637, 83rd Congress), on their fact and as applied, constitute a bill of attainder in violation of the Constitution.

2. Section 2 of the Smith Act (54 Stat. 671) and Section 2385, Title 18, United States Code, as amended and supplemented by Sections 2, 3, and 4 of the Communist Control Act of 1954 (Public Law 637, 83rd Congress) on their fact, and as applied violate the due process clause of the Fifth Amendment.

3. Sections 2, 3, and 4 of the Communist Control Act of 1954, deny the defendant the right to a fair and impartial trial in violation of the due process clause of the Fifth Amendment.

4. Section 2 of the Smith Act (54 Stat. 671) and Section 2385, Title 18, United States Code, as amended and supplemented by Section 5 of the Communist Control Act of 1954 (Public Law 637, 83rd Congress), on their fact and as applied violate the due process clause of the Fifth
12 and the First Aemndment to the Constitution of the United States.

Claude Lightfoot,
By Joseph E. Clayton, Jr.,
His Attorney.

13 And afterwards, to wit, on the 1st day of November, 1954, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

14 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—54-Cr-262) • •

This cause coming on for disposition on the defendant's motion to dismiss the Indictment comes the United States by the United States Attorney comes also the defendant Claude Mack Lightfoot in his own proper person and by his counsel and the Court being fully advised it is

Ordered that said motion be and the same is hereby denied and the defendant being now arraigned upon the Indictment filed herein against him pleads not guilty thereto and it is

Further Ordered that this cause be and the same is hereby continued to November 3, 1954 at 10 o'clock A. M. for a pre-trial conference.

• • • • • •

36 And on, to wit, the 30th day of March, 1955 there was filed in the Clerk's office of said Court a certain Transcript of Proceedings at the Trial, Before the Honorable Philip L. Sullivan, Judge, on January 10, 11, 12, 13, 14, 17, 18, 19 20 21 24 25 and 26, and February 15 1955, in words and figures following, to wit:

1 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr.-262) * *

TRANSCRIPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Philip L. Sullivan, one of the judges of said court, and a jury, commencing on Monday, January 10, 1955, at 10:00 o'clock A. M., in the United States Court House, at Chicago, Illinois.

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney. By: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell, III, Special Assistant to the Attorney General, appeared on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., appeared on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

2 And thereupon the following proceedings were had therein:

Jury Voir Dire (Not transcribed).

Court recessed to 2 o'clock P. M.

Monday, January 10, 1955.
2:00 o'clock P. M.

Court met pursuant to recess.

Jury Voir Dire resumed (Not transcribed). Court adjourned to 10:00 o'clock A. M., Tuesday, January 11, 1955.

Tuesday, January 11, 1955.
10:00 o'clock A. M.

Court met pursuant to adjournment.

Jury Voir Dire resumed (Not transcribed). Twelve jurors and two alternates, having been examined, duly qualified and accepted, were sworn to try the issues.

Court recessed to 2:00 o'clock P. M.

3 Tuesday, January 11, 1955.
2:00 o'clock P. M.

Court met pursuant to recess.

And thereupon the Jury heard the opening statements of counsel for the Government and for the Defendant.

(Opening Statements not transcribed.)

Court adjourned to 10:00 o'clock A. M. Wednesday, January 12, 1955.

4 IN THE UNITED STATES DISTRICT COURT.
(Caption—54-Cr.-262)

Before Hon. Philip L. Sullivan, Judge and a Jury.

Wednesday, January 12, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, By: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Special Assistant to the Attorney General, appeared on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., appeared on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

5 And thereupon the following further proceedings were had in said cause:

(The following proceedings were had out of the presence and hearing of the jury:)

Mr. Parsons: Your Honor, may we ask this matter be held just a minute or two? In respect of your Honor's suggestion of yesterday about a stipulation, I have one that is being typed up, which I would like to confer with counsel about. It will be ready in about five minutes.

The Court: In the meantime, for the record, I will have the defendant state he is a member.

Mr. Abt: I see no necessity for a stipluation. I don't believe your Honor suggested it yesterday, as a matter of fact.

The Court: Yes, but he said he wanted to do it, however.

Mr. Abt: His admission should be sufficient stipulation.

Mr. Parsons: Perhaps counsel would want to see my stipulation first.

The Court: I want for the record the statement of the defendant.

You admit that you are a member of the Com-
6 munist Party, is that correct?

Defendant Lightfoot: I do, your Honor.

The Court: You admit you are a Communist?

Defendant Lightfoot: That is right.

Mr. Abt: Isn't that all we need?

The Court: I don't know.

Mr. Parsons: No. I believe that the cases indicate in a case like this it should be in writing.

The Court: Well, I will see what it is when it comes up.

Mr. Abt: Just one other preliminary matter. I saw Judge Perry this morning.

The Court: Yes, I have entered the order.

Mr. Abt: He was going to call you and tell you he had no objection.

The Court: I have entered the order.

(Whereupon a short recess was taken.)

7 Mr. Parsons: My apologies, your Honor. My personal typist was occupied, and I have the best in the office, and the others are not quite as fast as she.

I wonder if counsel would want to confer with us about this?

Mr. Abt: Surely.

Mr. Parsons: Your Honor, another matter has come to our attention which we believe should be discussed with the Court privately in chambers with counsel and with your reporter.

The Court: You say you would like to discuss it in chambers?

Mr. Parsons: Yes, your Honor.

The Court: All right. Let us see what this matter is.

Mr. Parsons: This is—

Mr. Abt: The stipulation?

Mr. Parsons: The offer.

Mr. Abt: Judge, we can't sign this stipulation.

Mr. Parsons: Would your Honor care to review the stipulation?

Is there any portion of it that you would want to stipulate to?

Mr. Abt: If your Honor please, Mr. Crockett made
8 a statement in the opening, and in response to your Honor's questions Mr. Lightfoot made a statement this morning, the effect of both of which statements is that certainly during the three-year period preceding the return of the indictment Mr. Lightfoot was a member of the Communist Party.

I think we can go farther than that, and I think Mr. Crockett's statement did, and that is, reserving any question as to the relevancy of such a fact, that during the indictment period or at least from November, 1945, when Mr. Lightfoot was discharged from the Army, until the return of the indictment, Mr. Lightfoot was a member of the Communist Party. That is what the indictment charges, your Honor, and that is what the admission covers.

But we are not prepared to stipulate to all of the other facts contained in that stipulation, and which do not deal with the charge in the indictment, either. The charge in the indictment is membership, Mr. Parsons.

Mr. Parsons: Perhaps counsel will wish to stipulate as to Part 1 of the proposed stipulation. Do you have a copy there?

Mr. Crockett: May I say this, your Honor. First, I do not believe that under the law a stipulation is re-

quired. If counsel makes an admission on behalf of his client that is accepted as the admission of his client.

The Court: This goes further than that, Mr. Crockett, if you have read it.

Mr. Abt: Yes.

Mr. Crockett: Yes.

The Court: Further than what you have admitted.

Mr. Crockett: Yes, it goes further and wishes us to state the particular date when Mr. Lightfoot held a particular office. In my opening I admitted, I said there would be no dispute, first, as to membership, second, as to officership in the Communist Party. I mentioned one office he actually held; that was Chairman of the Communist Party of Illinois.

I fail to see where any further stipulation is required. The statute speaks of membership or officership.

Mr. Abt: Membership.

Mr. Crockett: As a matter of fact, the Smith Act speaks only of membership.

Mr. Parsons: I don't want to represent to the Court that the Government is attempting to coerce or insist upon counsel's entering into a stipulation. My impression, your Honor, was merely this, and that is that there were certain very clear admissions made in the opening statement, which were affirmed after the opening statement, with the proposal to stipulate as to those admissions. I thereupon was impressed with what I felt was an instruction to see what we could do in the way of working out something in writing.

The Court: If they won't admit it there is no use taking up time with it.

Mr. Parsons: There is no use doing that, no.

The Court: How about the first part of it?

Mr. Abt: We can't do that, either, your Honor.

The Court: All right.

Mr. Abt: First of all, because it is not factually correct.

The Court: All right.

Mr. Parsons: May we step in chambers?

The Court: Yes.

(The following proceedings were had in chambers, still outside the hearing and presence of the juy:)

Mr. Parsons: Your Honor, it came to our attention

yesterday that two of the jurors, of the regular jury panel, were seen during the lunch hour after they had been sworn in, in the corridor of this building, talk-
11 ing with a person who is not a regular attendant to the court building or is not regularly seen in the court building, who was in the audience in the court room during the impaneling of the jury. We were solicitous that perhaps a strong instruction repeated, since your first instruction was very strong, repeated again, would be of some assistance, so that no concern need be made further about that situation.

This morning it came to our attention that the second alternate juror—

Mr. O'Donnell: I think, your Honor—

Mr. Parsons: The husband of the second alternate juror—I would rather Mr. O'Donnell explain the exact facts of it. I am not sure of the exact situation.

Mr. O'Donnell: Your Honor, we don't place at this time any particular significance in the fact, but we thought it was something that should be brought to your attention than that it came to your ears from other sources.

We were stopped by reporters in the corridor this morning and informed that they had information that apparently the husband of the second alternate juror had
12 been on a mailing list for, I believe, the Rosenberg Defense Fund, or something of that sort. Apparently the reporters here were possibly interested in a story or something of that sort. Anyway, they wanted to know what we were going to do about it, were a little pressing in that matter. For that reason we thought we ought to bring it to your attention in Mr. Abt's and Mr. Crockett's presence, for your information, and to inform you that as far as we are concerned—

The Court: I think I asked them, of course, if they contributed.

Mr. O'Donnell: That is right.

Mr. Abt: You did, your Honor.

Mr. O'Donnell: They or any members of their family.

13 The Court: Yes, they or any members of their family.

I will tell you, when the jury come in this morning I will caution them not to hold a conversation with anyone in this building outside of their associate jurors. I think that will take care of that.

You see, that is quite difficult at times. I think I will go farther than that. I had a case not so long ago in the last year, in which one of the jurors was talking to one of the lawyers in the elevator and outside of the elevator, particularly in reference to some social event. Well, the other lawyer, it came to him and he didn't know what they were talking about. Of course, it is embarrassing to a lawyer, if some one of the jurors came up and said, "Well, do you fly", or what not, they might take an affront if you didn't answer them.

I think I will have some few words about that.

Mr. Parsons: We are, of course, solicitous that Mrs. Sensibar, who is the second alternate, not be embarrassed by anything the newspaper may print as a result of
14 that statement.

The Court: I think I covered that by the fact that—

Mr. Abt: Obviously, the fact that she was on a mailing list is completely meaningless. Anybody can be on a mailing list.

Mr. Parsons: The press has a story and they may want to make something out of it, and they didn't want either counsel for the defense or the Judge to be surprised by that.

The Court: I see. Now, while we are here, in view of the admission of the defendant, just what is your position about proof?

Mr. Parsons: I feel, your Honor, that it is going to be necessary to establish some affirmative proof of membership, because we don't want the record on that to rely entirely upon that admission.

The Court: I will permit that. I will permit you to offer something—

Mr. Parsons: I shan't go into it too thoroughly.

The Court: But it is not to be too cumulative.

Mr. Parsons: We shan't go too far.

The Court: All right.

Mr. Parsons: We will just go far enough to show—
15 Mr. Abt: I will object to it for the record, your Honor. I think it is entirely unnecessary.

The Court: I know, but under the State law and of course the Judge has a wide discretion in the allowance of it.

Mr. Abt: Of course.

Mr. Crockett: You mean as to dates and particular offices held during these dates?

Mr. Parsons: That will come later, but just to be assured that we do place him within the party during the statutory period, we will put into evidence some documents that will establish that, and then that will keep us from relying totally on this admission.

The Court: All right. You may make your record.

Mr. Parsons: Thank you, your Honor.

Mr. Abt: Thank you.

The Court: And under our rules it won't be necessary to take an exception.

Mr. Abt: No, your Honor. I understand that.

Mr. Crockett: May I get one thing straight, your Honor. In the event we object to a question is it necessary to state the grounds for our objection? Do you want us to state the grounds?

16 The Court: Unless I ask you.

Mr. Crockett: Just say "objection"?

The Court: Yes.

Mr. Crockett: Good.

The Court: Unless I ask you.

How many witnesses will you have?

Mr. Parsons: In this preliminary thing they won't take ten or fifteen minutes.

The Court: I would have as many witnesses as you can brought into the court to be sworn.

Mr. Parsons: To be sworn?

The Court: Yes, and then they can go back in the witness room.

Mr. Parsons: I will have to send for them.

The Court: All right. Have them up here as soon as you can.

17 The Court: Bring in the jury.

(Whereupon the jurors took their seats in the jury box, and the following proceedings were had in the presence and hearing of the jury.)

The Court: I just want to caution you jurors further not to converse with anyone who may be in the courtroom. I mean, on your way out or in, or with anyone else around the building while you are on the jury.

I further state to you not to attempt to talk to any of the people that are involved here, the people around the table, because it would only be an embarrassment if they refused to bid you the time of the day, or anything else, which you might take an affront, but which none of them mean. If

you will just refrain from that, I think we will get along. All right, Mr. Parsons.

Mr. Parsons: Do you want to swear the witnesses who are here in the courtroom, your Honor, the Government witnesses?

The Court: Yes.

Mr. Parsons: Will all the Government witnesses in the courtroom please stand.

18 The Court: Are you going to use one of those?

Mr. Parsons: We are going to want to use one of these, your Honor.

The Court: All right, swear the witnesses that are here.

(Three witnesses sworn by the Clerk.)

The Court: I have not heard a motion for an order to exclude witnesses.

Mr. Abt: I ask that such an order be entered.

Mr. Parsons: Will the witnesses other than Mr. Levin please leave the courtroom. Mr. Levin, will you take the stand, please.

LAWRENCE LEVIN, called as a witness on the part of the Government, being first duly sworn, testified as follows:

The Court: What is your name, sir?

The Witness: Lawrence Levin.

The Court: L-e-v-i-n?

The Witness: Yes.

The Court: Where do you live?

The Witness: 9040 Ridgeland Avenue.

The Court: Chicago?

The Witness: Chicago.

The Court: What do you do?

19 The Witness: I am assistant cashier in charge of the records of the Amalgamated Trust and Savings Bank.

The Court: Proceed.

Direct Examination by Mr. Parsons.

Q. Mr. Levin, how long have you been with the Amalgamated Trust and Savings Bank?

A. Eight years.

Q. As assistant cashier of that bank, is the making of the records of that bank under your supervision?

A. Yes.

Q. Is the keeping of the records of that bank under your supervision and control?

A. Yes.

Q. Are the records of that bank made in the regular course of business of the bank?

A. Yes.

Q. Mr. Levin, you were subpoenaed, were you not, in this cause?

A. Yes.

Q. You were served with a subpoena duces tecum
20 to produce certain records, is that right?

A. That is right.

Q. Did you bring them with you?

A. I did.

Q. May I have them, please?

A. Yes.

(Witness produces documents.)

Mr. Parsons: Mr. Reporter, will you kindly mark these in order Government Exhibits 1, 2, 3, 4, 5 and 6?

(Whereupon said documents were marked for identification, respectively, Government Exhibits 1, 2, 3, 4, 5 and 6.)

The Court: I might suggest to counsel on both sides, if they have any numbered exhibits, to have them marked before they are presented, so you won't take up the time of the Court.

Mr. Parsons: We shall hereafter do that, your Honor.

By Mr. Parsons:

Q. Mr. Levin, I show you Government Exhibit 1, marked for identification, which purports to be an authorized
21 signature card of the Communist Party, Illinois State Committee, and ask you if that is one of the official records of the Amalgamated Trust and Savings Bank?

A. It is.

Mr. Abt: I want to object and briefly state the grounds for my objection, if I may. I object on the ground that it clearly appears the purpose of the question and of the calling of the witness is to establish membership of Mr. Lightfoot in the Communist Party; and in the light of our concession yesterday, that we are not disputing Mr. Lightfoot's membership in the Communist Party, I submit that the evidence is entirely unnecessary.

Mr. Parsons: Perhaps counsel would want to allow me to make an offer of proof as to what this witness would testify to, and enter that offer of proof into evidence.

Our effort at the beginning of the case was to stipulate and to make unnecessary any of these witnesses to establish that fact. Now we are asked to not enter into that
22 issue. I don't quite understand the position of counsel.

The Court: Well, let it be understood that you are objecting to anything which goes to prove that he is a Communist or a member of the Communist Party. That objection stands.

Mr. Abt: That objection is on the ground, your Honor, that that fact has already been conceded, and therefore is not an issue in the case.

The Court: Yes, so you wan't need to object to that, except you may object if you think it is too cumulative, unless the Court stops it.

Mr. Abt: All right.

The Court: You may proceed.

By Mr. Parsons:

Q. Mr. Levin, I will ask you if you recognize that? Do you?

A. Yes, I do.

Q. Is that a record of the Amalgamated Trust and Savings Bank?

A. It is.

Q. Was that made in the regular course of business
23 of the bank?

A. Yes.

Q. And is it kept under your supervision and control?

A. Yes.

Q. I show you now Government Exhibit 2, marked for identification, which purports to be an authorized signature card of the Communist Party of Illinois, Illinois State Committee, a special account, containing a signature, and ask you if you recognize that?

A. I do.

Q. Is that a record of the Amalgamated Bank?

A. Yes.

Q. Made and kept in the regular course of the business of the bank?

A. Yes.

Q. Under your supervision and control?

A. Yes.

Q. I show you Government Exhibit 3, marked for identification, which appears to be a special account, Communist Party Illinois District, and ask you if you recognize that.

24 A. I do.

Q. Is that a part of the records of your bank?

A. Yes.

Q. Was it made and kept under your supervision and control?

A. Yes.

Q. As part of the regular course of business of the bank?

A. Yes.

Q. I show you Government Exhibit 4, marked for identification, which purports to be an account card of the Communist Party of Illinois State Committee, and ask you if that is one of the records of your bank?

A. Yes.

Q. Was it made and kept under your supervision and control?

A. Yes.

Q. Was it made and kept as a part of the regular course of business of the bank?

A. Yes.

Q. I show you Government Exhibits 5 and 6, both of which purport to be—the fifth of which purports to be

25 a declaration by officers of an unincorporated organization, The Communist Party Illinois District, and Government Exhibit 6 for identification, which purports to be a certificate of authority of organization, special account, bearing signatures and titles, and ask you if that is an official record of your bank?

A. They are.

Q. Both are, is that correct?

A. That is right.

Q. They were made and kept as a part of the regular course of business of the bank?

A. Yes.

Q. Under your supervision and control?

A. Yes.

Mr. Parsons: If it please the Court, I shall not offer these in evidence at this moment. I should like to go to the next witness and connect these documents.

The Court: You say you will not?

Mr. Parsons: Not at this moment. Will you step down, please.

The Court: Wait a minute.

Mr. Parsons: Any questions, Counsel?

Mr. Abt: No questions. I am very certain I will
26 have no questions of the witness, but it seems to me the procedure is a little bit confusing, that the witness leaves the stand before the exhibits are offered and before I have a chance to examine them.

The Court: The rule is and will be that once a document is exhibited and identified, you may have the opportunity to see that exhibit and examine it.

Mr. Parsons: While the witness is on the stand?

The Court: Yes.

Mr. Parsons: It is not necessary to offer the exhibit in evidence while the particular witness is on the stand?

The Court: No, it is not.

So as not to waste the time of the court, have your associate bring in the next witness when the witness on the stand is about ready to be excused.

(Witness excused.)

27 CHARLES W. McCARTHY, called as a witness on the part of the Government, being first duly sworn, testified as follows:

The Court: What is your name, sir?

A. Charles W. McCarthy.

Q. Where do you live?

A. 7147 Jeffrey Avenue.

Q. Chicago?

A. Chicago, Illinois.

Q. What do you do?

A. In the banking business.

Q. Where?

A. Drexel National Bank.

The Court: All right.

Direct Examination by Mr. Parsons.

Q. What are your duties at the Drexel National Bank?

A. I am vice president and cashier.

Q. How long have you been with that bank?

A. Thirty-one years.

Q. Is the making and keeping of records under your supervision and control?

A. Yes.

28 Q. Are the records of the bank kept in the regular course of business of the bank?

A. I beg your pardon?

Q. Are the records of that bank made and kept in the regular course of business of the bank?

A. Yes.

Q. You were subpoenaed to appear here, were you not?

A. I was.

Q. You were served with a subpoena duces tecum to produce certain records, is that right?

A. That is right.

Q. Did you bring them with you?

A. Yes.

Q. May I have them, please?

A. Yes. (Witness produces documents.)

Mr. Parsons: Mr. Reporter, will you mark these Government Exhibits 7 and 8 for identification, please?

(Whereupon said documents were marked for identification, respectively, Government Exhibits 7 and 8.)

By Mr. Parsons:

29 Q. Now, I show you, Mr. McCarthy, Government Exhibit 7, marked for identification, which purports to be a signature card of your bank, of an account at your bank, a person with an account at your bank, named Claude M. Lightfoot, and signature on it, and the title of the business or occupation. Do you recognize that, please?

A. Do I recognize the signature?

Q. No. Do you recognize that document itself?

A. Yes.

Q. Is that a part of the records of your bank?

A. Yes, it is.

Q. Was it made and kept in the regular course of the business of your bank?

A. That is right.

Q. Under your supervision and control?

A. Right.

The Court: It may be, Mr. Parsons, that if you would submit the exhibits to counsel, he might admit them without going into the proof of them.

Mr. Parsons: It would save a great deal of time, your

Honor, if counsel will admit that those are records of the bank, made and kept in the regular course of business,
30 that is all.

Mr. Abt: We will concede that these records which the witness has produced were kept by the bank in the regular course of business.

The Court: You say you agree to that?

Mr. Abt: Yes.

Mr. Parsons: That is, of the Amalgamated Bank.

Mr. Abt: The witness has already testified to it. We will concede, if it has not been testified to, surely. We are not contesting that.

Mr. Parsons: Will you step down, please. Thank you.
(Witness excused.)

31 Mr. Parsons: Before I offer them in evidence, perhaps counsel would want to look them over.

The Court: Yes. Proceed with the next witness.

W. C. ANDERSON, called as a witness on the part of the Government, being first duly sworn, testified as follows:

The Court: What is your name?

The Witness: W. C. Anderson.

The Court: Where do you live?

The Witness: I live in Homewood, Illinois.

The Court: What do you do?

The Witness: I am an assistant director at Blue Cross Plan for Hospital Care.

The Court: Where located?

The Witness: At 425 North Michigan, in this city.

The Court: Assistant director of the Blue Cross?

The Witness: Yes, sir.

The Court: That is an insurance company?

The Witness: Yes, sir.

The Court: How long have you been there?

The Witness: I have been there seven years and three months, sir.

32 *Direct Examination by Mr. Parsons.*

Q. In your capacity as assistant director, Mr. Anderson, are the records of that hospitalization company kept under your supervision and control?

A. Yes, they are.

Q. Are they made under your suprevision and control?
A. Yes, sir.
Q. You were subpoenaed, were you not?
A. Yes.
Q. You were served with a subpoena duces tecum to produce certain records, is that correct?
A. Yes.
Q. Did you bring them with you?
A. Yes, I did.
Q. May I have them, please?
A. Yes.
(Witness produces documents.)
The Court: I suggest the same procedure. Show them to counsel. I am not asking if you admit the competency, Mr. Abt, but whether you admit the genuineness of the records.

33 Mr. Abt: That is correct.
Mr. Parsons: Mr. Reporter, while Mr. Abt is looking at some of the other exhibits, will you mark these Government Exhibits 9, 10, 11, 12, 13, 14, 15 and 16 for identification?
(Whereupon said documents were marked for identification, respectively, Government Exhibits 9, 10, 11, 12, 13, 14, 15 and 16.)
Mr. Parsons: May it please the Court, I have shown counsel Government's Exhibits 9 to 16. Perhaps he will want to concede the authenticity of those documents.
Mr. Abt: Are those the only ones you are interested in?
Mr. Parsons: The others, I believe, are not material.
Mr. Abt: We will concede the authenticity.
The Court: You admit that?
Mr. Abt: We admit the authenticity, of course.
(Witness excused.)

34 EDWIN H. FELT, called as a witness on the part of the Government, being first duly sworn, testified as follows:

The Court: Your name is Edwin H. Felt, is it?
The Witness: Edwin H. Felt.
The Court: Where do you live, Mr. Felt?
The Witness: 2305 Arthur Avenue, Chicago.
The Court: What is your business?

The Witness: I am deputy director of Selective Service for the State of Illinois.

The Court: Proceed.

Direct Examination by Mr. Parsons.

Q. How long have you been deputy director, Mr. Felt?

A. I have been an administrative assistant for something over fourteen years, since 1940.

Q. Were you in either of those positions in 1940?

A. Yes.

Q. Is the making of records of Selective Service under your supervision and control?

A. The records that I hold, yes.

Q. The keeping of the records is under your supervision and control?

35 A. That is correct.

Q. You were subpoenaed to produce certain records, is that right?

A. That is right.

Q. Did you bring them with you?

A. I did.

Q. May I have them, please?

A. Yes.

(Witness produces documents.)

Mr. Parsons: Mr. Reporter, will you mark this Government Exhibit 16 for identification, with inner parts 16-A, -B, -C, -D, -E, -F and -G?

(Whereupon said documents were marked for identification, respectively, Government Exhibits 16, 16-A, 16-B, 16-C, 16-D, 16-E, 16-F and 16-G.)

The Court: What are they offered for?

Mr. Parsons: It bears the signature, and certain statements in the record as to affiliation or employment of the defendant.

The Court: I see. All right.

Mr. Abt: I am not sure, your Honor, but I had a 36 recollection that Selective Service records were privileged. Am I wrong on that?

The Court: I guess you are wrong. At least, you are wrong or I am wrong. I have been admitting them.

Mr. Abt: I accept your judgment, your Honor.

Mr. Parsons: May I ask the witness one question concerning the authority to place the records in evidence.

By Mr. Parsons:

Q. Do you have authority from the Director of Selective Service, the National Director of Selective Service, to answer this subpoena duces tecum?

A. Yes.

Q. I show you Government Exhibit 16, with inner parts marked -A through -G, which purport to be the Selective Service cover sheet and signature registration of one Claude Mack Lightfoot, and ask you if that is an official record of the Selective Service System?

A. It is.

Q. Was that made and kept under your supervision and control?

A. Right.

37 Q. Was it made as part of the regular business of Selective Service?

A. That is correct.

38 Mr. Parsons: This, your Honor, is the last of these documents. I make that statement to allay any apprehension that we will continue this indefinitely.

Mr. Abt: Did you make an offer?

Mr. Parsons: No, I haven't made the offer.

Mr. Abt: I am sorry. Of course, I concede the authenticity of the Selective Service record, of course.

Mr. Parsons: No further questions of this witness?

Mr. Abt: No questions.

Mr. Parsons: Would you kindly step down, please?

(Witness excused.)

Mr. Parsons: May it please the Court, I would like to offer all the Government's Exhibits at one time, and counsel will have some objections to some of them, I am sure.

First, we want to offer Government's Exhibit 1, which is the authorized signature card of an account in the Amalgamated Trust and Savings Bank of Chicago of the

39 Communist Party Illinois State Committee, carrying the signature of Claude Lightfoot together with Alfred Wageknecht. This has been identified by the witness as an official document of that organization. The date on the signature card is 9/18/45, 4/9/48, 11/22/48, 9/28/48.

Government's Exhibit 2 is an authorized signature card of the same bank for the account of Communist Party Illinois State Committee, Special Account, signature of Claude Lightfoot, stating "State Secretary." The date on that is September 28, 1950.

Mr. Abt: 3 and 4 don't refer to anything at all, do they?

Mr. Parsons: Government's Exhibit 3, special account, Communist Party Illinois, is an account card showing that on the last date of this card, which appears to me to be 1952, the account was still open.

The same thing is true about the account card of the Communist Party Illinois State Committee, which carries right on up to the present date, apparently is still open, the account in that bank.

We have here Government's Exhibit 5 which is, your Honor, a declaration of officers of an unincorporated
40 organization, the Communist Party Illinois State Committee, filed with that bank, showing as secretary of the organization, Claude Lightfoot, with address.

Government's Exhibit 6, which is a certificate of authority for signature for special account on that same bank, Communist Party Illinois State Committee, showing Claude Lightfoot attested as president of the organization.

Government's Exhibit 7, your Honor, is an account card of the Drexel National Bank, bearing the signature of Claude M. Lightfoot and Lillian Graves, and stating thereon "Business, Communist Party."

There is also Government's Exhibit 8, which is a closed account card with the account record from the Drexel National Bank, bearing signature of Claude Lightfoot, showing occupation, labor organizer.

41 Government's Exhibit 9 is the application card for Blue Cross, Blue Cross Hospitalization Fund on group insurance for the Communist Party, card signed by Claude M. Lightfoot. It bears the date of employment, 1937, your Honor.

Government's Exhibit 15 is an account record of that same group insurance policy with Blue Cross, showing that the account is active for the group members up to December 14, 1954. Appearing thereon is the name C. M. Lightfoot.

Government's Exhibit 16, which is the group exhibit Selective Service cover sheet and file with the contents thereof marked A to G, is the Selective Service file of Claude Lightfoot, showing his registration for Selective Service in 1940.

Part 16-A thereof is the Selective Service questionnaire. On page 2 of that questionnaire appears the information:

"My employer is the Chicago Workers School. My job is instructor in political economy."

On the signature registration card, which is 16-G, is
42 also the signature of Claude Lightfoot, and the information that his employer is Frank Meyer at 231 South Wells, Chicago.

The Government offers these exhibits into evidence and asks that they be accepted in evidence as Government's Exhibits 1 through 16.

The Court: Is the signature admitted?

Mr. Abt: The signature of Mr. Lightfoot?

The Court: Yes.

Mr. Abt: As it appears on these cards?

The Court: Yes.

Mr. Parsons: And certain others.

Mr. Abt: We will admit the authenticity of his signature as it appears on any of the bank accounts and in the Selective Service questionnaire, surely.

The Court: All right.

Mr. Parsons: How about the Blue Cross?

Mr. Abt: Does the signature appear on the Blue Cross?

Mr. Parsons: Yes, on the application.

Mr. Abt: We will admit its authenticity, of course.

Mr. Parsons: All right.

Mr. Abt: May I ask, Mr. Parsons, you are offering the entire Selective Service record?

43 Mr. Parsons: Yes. We can't remove from the record any portion of it.

Mr. Abt: And will that be available to counsel for the defense?

Mr. Parsons: For what part of it is material.

Mr. Abt: Because we will at a later stage in the trial, we will want to read to the jury some portions of that record, your Honor.

The Court: I beg your pardon?

Mr. Abt: We will at a later stage want to read to the jury certain portions of that record. I want to be sure it will be here and available to us.

The Court: It will be available to you, anyway. I will pass on that at the time.

Mr. Parsons: That is quite all right.

The Court: All right.

Mr. Abt: Now, your Honor, our only objection to all of these exhibits is, as I stated to you before, that the purpose of their offer is to establish that Mr. Lightfoot is a member of the Communist Party, and as to that matter, as Mr.

Crockett stated yesterday in his opening, there is no dispute, so that the sole purpose of the offer is to prove
44 something which is conceded, and we think it quite unnecessary, therefore.

The Court: They may be received in evidence.

Mr. Parsons: Thank you, your Honor.

(Thereupon said documents, so offered and received in evidence, were marked, respectively, GOVERNMENT'S EXHIBITS 1 to 16, both inclusive.)

Mr. Parsons: Mr. Lee Blackwell, please.

The Court: Has this witness been sworn?

Mr. Parsons: This witness has not been sworn, your Honor.

The Court: Have you other witnesses out there that have not been sworn?

Mr. Parsons: No, your Honor. There is one additional witness which may be called this morning. We will have him come so that he will be immediately available and not waste the time of the Court in being sworn.

Mr. O'Donnell: He has not arrived yet.

The Court: All right. Swear the witness.

LEE BLACKWELL, called as a witness on the part
45 of the Government, being first duly sworn, testified as follows:

Direct Examination.

The Court: What is your name?

The Witness: Lee Blackwell.

The Court: B-l-a-c-k-w-e-l-l?

The Witness: That is right.

The Court: Where do you live, sir?

The Witness: 6012 Vernon Avenue.

The Court: What do you do?

The Witness: I am a newspaper reporter.

The Court: What paper?

The Witness: The Chicago Defender.

The Court: All right. Go ahead.

By Mr. Parsons:

Q. How old are you, sir?

A. Twenty-five.

Q. How long have you lived in Chicago?

A. Three and a half years.
Q. Where were you born?
A. Washington, D. C.
Q. Where did you go to school?
A. I went to school at Johnson C. Smith University in Charlotte, North Carolina, and Lincoln University, Missouri.
Q. Is that in Jefferson City, Missouri?
46 A. That is right.
Q. Did you graduate from those schools?
A. Yes. I have the bachelor of arts degree from Johnson C. Smith, and the bachelor of science and journalism from Lincoln.
Q. When did you receive your journalism degree?
A. In June of 1951.
Q. When did you go to work for the Chicago Defender?
A. In June, 1951, upon my graduation.
Q. What are your duties on that job now?
A. At the present time my specific duties are that of police reporter.
Mr. Abt: I am sorry, I didn't hear it.
The Court: Police reporter? Is that right?
The Witness: That is right.

By Mr. Parsons:

Q. What were your duties on or about October 3, 1954, if you recall?
A. On October 3, 1954 I happened to be assigned to a meeting, a rally, in Washington Park.
Q. Who assigned you, sir?
A. My city editor, Mr. Charles Davis.
Q. Did you attend this rally?
47 A. Yes, I did.
Mr. Abt: If your Honor please, I want to object on the ground that October, 1954 was subsequent to the date of the return of the indictment.
Mr. Parsons: I believe, if I may, your Honor, the date so stated on the return of the indictment carries right up to the time of the trial. I mean the fact that a situation existed at the moment the indictment is returned, it does not cease to exist at any time thereafter. In addition to that, I believe we have the right to introduce the testimony of this witness as to what happened in October, 1954, to show pattern, to show design as to what happened.

The Court: I think you are limited, Mr. Parsons, in view of my ruling on their motion.

Mr. Abt: That is correct, your Honor.

Mr. Parsons: What ruling was that, your Honor? I don't recall a ruling on the motion.

48 The Court: That you are limited to up to the date of this indictment.

Mr. Parsons: You mean that the Government must cease proof of any Communist activities of the defendant after the date of the indictment?

The Court: I think that is correct, because your rule of law shows it.

Mr. Parsons: It is my understanding, your Honor, that you did say that we must make that proof and that we must establish that fact within the statutory period, but for the purpose of showing pattern or design a statement or an admission made by the defendant after the date of the indictment, that carries back into the indictment period, would be admissible into evidence.

Mr. Abt: I understood your Honor's opinion, and I think it was clearly stated, in denying the motion to dismiss the indictment, you stated that the question at issue here was the status of the defendant and the charges in the indictment up to the date on which the indictment was returned.

49 Mr. Parsons: May we make an offer of proof in chambers?

The Court: Later, outside of the presence, yes, outside of the presence of the jury, you may make an offer of proof.

Mr. Parsons: Yes. May we do that?

The Court: Unless you want to do it now.

Mr. Parsons: I would like to do it in order to clear the matter of our proof.

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Parsons: We do propose to prove his membership in the Party and, as we contend, that he was a member and officer of the Party on that date, but to introduce in evidence admissions made by him on that date relative to membership and his conduct during the statutory period prior thereto.

The Court: Yes, but he may make certain statements

before this indictment. I couldn't make a different rule on that, as to what happened after that. That is the
50 reason.

Mr. Parsons: After the Act of July 25?

The Court: Yes.

Mr. Abt: In addition, your Honor, it seems to me that on the basis of the discussion we had previously Mr. Parsons already has in all this documentary evidence. I don't know what more he wants.

Mr. Parsons: I concede that we have an accumulation of evidence.

What the witness would testify to if he were called upon to testify is that he attended the meeting, and in the course of the meeting Claude Lightfoot spoke, and in the course of his speech he stated that he was and that he had been a member of the Communist Party since 1934—

The Court: I will sustain the objection.

(Thereupon the following proceedings were had in open court, in the hearing and presence of the jury:)

Mr. Parsons: May it please the Court, there are no further questions of this witness.

51 The Court: Any cross?

Mr. Abt: No cross.

Mr. Parsons: Would you step down, please?

(Witness excused.)

Mr. O'Donnell: May we approach the bench for a moment?

The Court: Yes.

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. O'Donnell: The next witness we intend to call is coming from out of town. I have just gone down to check. He hasn't arrived in the building, but he should be here in a moment. In the interest of the orderly presentation of our case we feel he should go on next. We frankly didn't—

The Court: Maybe he won't be here for a week.

Mr. O'Donnell: No, he is on his way in right now.

The Court: I know, but I think you could put on some other witness to take up the time. I can't stop this trial.

Mr. O'Donnell: I assure your Honor that from now
52 on—

The Court: Can't you put on another witness?

Mr. Parsons: We could put one on and then interrupt him.

The Court: Yes.

(The following proceedings were had in open court, in the presence and hearing of the jury:)

53 Mr. O'Donnell: Your Honor, we beg the Court's indulgence and that of the jury as well. We have proceeded very quickly here in the selection of the jury, and from now on I anticipate that we will go right along.

The Court: You might prepare for the acceleration.

Mr. O'Donnell: Yes, we are prepared from now on in.

The Court: All right.

Mr. Parsons: Would you take the stand, please?

GARFIELD HERRON, called as a witness on the part of the Government, being first duly sworn, testified as follows:

Direct Examination.

The Court: What is your name?

The Witness: Garfield Herron.

The Court: How do you spell the last name?

The Witness: H-e-r-r-o-n.

The Court: Where do you live?

The Witness: I reside here in Chicago.

The Court: What do you do?

54 The Witness: I work at Motorola.

The Court: In what capacity?

The Witness: Maintenance, in the maintenance department.

The Court: All right, Mr. Parsons.

By Mr. Parsons:

Q. How long have you been here in Chicago?

A. Well, off and on I live here now since 1950. I was in Hot Springs before then.

Q. Where is your birth place?

A. My birth place is in Hot Springs, Arkansas.

Q. And you are a citizen by—

A. Birth.

Q. By birth, is that right?

A. Yes, sir.

Q. When did you leave Hot Springs?

A. 1928, when I first came to Chicago, and then my sister lives here, and brother. Of course, I went back to Hot Springs.

Q. How old a man are you?

A. I am forty-five.

Q. Where did you go to school?

A. I went in Hot Springs, Oak Lawn School.

Q. How far did you go in the school?

55 A. Eighth grade.

Q. Did you go to any other college or school?

A. No, sir.

Q. High school?

A. No, sir.

Q. Do you know the defendant in this case, Claude Mack Lightfoot?

A. Yes, sir.

Q. Do you see him in the court room?

A. Yes, sir.

Q. Would you stand up and point him out, please?

A. He is sitting over there.

Q. Would you describe where he is sitting sir?

A. He is sitting at the end of the table.

The Court: You admit he is pointing out the defendant?

Mr. Abt: Yes, we do.

Mr. Parsons: May the record show the witness has identified the defendant?

The Court: All right.

By Mr. Parsons:

Q. Where did you meet him first?

A. I met him at—

Q. In what city?

56 A. In Chicago, here.

Q. That is here in the Northern District of Illinois?

A. Yes.

Q. Are you or have you ever been a member of the Communist Party?

A. Yes.

Mr. Parsons: May it please the Court, from time to time it may be necessary that I be relieved and leave the court room. May I do so without disturbing the procedure of the court and allow Mr. O'Donnell to continue, if it is all right with counsel? I would like for Mr. O'Donnell to complete the questions.

The Court: What would be the reason for you to leave?

Mr. Parsons: I want to go back to my office and confer with the next witness, to be sure that our timing is fast. Mr. O'Donnell can continue right ahead with this witness, your Honor.

The Court: Well, be sure that you don't duplicate any efforts.

57 Mr. Parsons: We will not duplicate any efforts.

The Court: All right.

By Mr. O'Donnell:

Q. Mr. Herron, you stated that you had been a member of the Communist Party?

A. Yes, sir.

Q. When did you become a member of the Communist Party?

A. In 1944, in summer.

Q. At that time what was the name of that organization?

A. It was the Communist Political Association.

Q. What were the circumstances under which you joined the party?

A. Well, at the time that I joined I was working at Douglas Aircraft out in Park Ridge, at Mannheim and Higgins, and there was a conrade out there, Comrade Norman Roth. He approached me and asked me if I would like to belong to the Communist Party, and I told him yes. I said how do I join?

He said, well, you have to be investigated first to be sure you are a good worker, he said.

So it went on. That was in the fall of 1943. So in 58 the spring of 1944 I was at home one day and two agents of the FBI came out and stopped me, showed me their credentials, and said, we are from the FBI and we would like to have you—he said, what do you know about the Communist Party?

I said, well, I have a friend that is a Communist, some friends out at Douglas, they are in the union.

He said, how about joining out with them and helping us to find out what they are doing here?

I said O. K., I said, if I can help you I will be glad to.

So he told me there was most likely probably to be a recruiting drive in the spring and they would approach me to join. I told him I had been approached already but I would have to be investigated first.

He said, well, keep in touch with them and go ahead and join out when they ask me to.

So in the summer, why, he come around with an application blank and I signed that.

The Court: Wo did?

The Witness: Norman Roth.

59 And it was a couple of months after that, why, I was invited to a meeting of the Communist Party.

By Mr. O'Donnell:

Q. Thereafter did you attend meetings of the Communist Party regularly?

A. Yes, sir.

Q. At the time you joined the party were you assigned to a club or any other organization?

A. Yes, sir, I was. I was assigned to Chaim Solomon Club on Roosevelt Road.

Q. Did you remain a member of that club throughout your membership in the—

A. No, sir, I didn't. It was in the spring of 1946 that Douglas Aircraft had closed up, and I transferred to Stewart-Warner, I mean I went over to Stewart-Warner and got a job over at Stewart-Warner, and shortly after that Gil Green attended a meeting at Chaim Solomon Club, and I asked him if—

Mr. Abt: Just a moment, your Honor.

The Court: Yes. No conversation.

The Witness: I asked him if—

The Court: No, don't state any conversation.

60 By Mr. O'Donnell:

Q. Merely state what happened.

A. That is what I am doing.

The Court: Well, what happened, not what he said or what you said. What did you do there?

The Witness: I asked him to—

The Court: No, no. What did you do?

The Witness: I had to get a transfer over to the other—

The Court: Did you get a transfer?

The Witness: Yes, sir.

The Court: All right.

By Mr. O'Donnell:

Q. And how long did you remain in that other club?

A. Throughout the rest of my time in the Communist

Party I remained in the other club, the Stewart-Warner Club.

Q. Directing your attention to the year 1945, did anything take place with regard to the Communist Political Association?

A. Yes, sir, they had a convention—

Mr. Abt: I object, your Honor.

61 The Court: He may answer. I may rule on your motion to strike after his answer is made.

The Witness: They had a convention in New York, the Communist Party did, and shortly after that, in August, they had a convention—

The Court: Of 1945?

The Witness: Yes, sir.

The Court: All right. Go ahead.

By the Witness:

A. They had a convention here in Ashland Boulevard Auditorium and the convention was to elect new officers and change the party from the Communist Political Association to the Communist Party, which is a revolutionary Marxist-Lenin theory.

Mr. Abt: Your Honor, I move to strike that?

The Court: The last part may go out.

Mr. Abt: I would like to move to strike the entire answer on two grounds; first, no foundation has been laid as to knowledge of the defendant and knowledge of the witness; and second, no connection has been shown with

62 Mr. Lightfoot, the defendant here.

The Court: I think probably you should develop that.

Mr. O'Donnell: Yes, your Honor.

The Court: I will delay my ruling on it.

63 Q. Did you attend the convention concerning which you have just testified?

A. Yes, sir.

Q. In what capacity did you attend?

A. I was invited to the meeting, not as a delegate.

Mr. Abt: Just a moment. The witness has testified to two conventions, one in New York.

The Court: Which one?

The Witness: The one in Chicago.

The Court: All right.

By the Witness:

A. (Continuing.) In the National Boulevard Auditorium. I was invited there really as a guest of the Party, a spectator, I guess, a visitor.

By Mr. O'Donnell:

Q. Do you recall what took place at that convention?
A. Yes, sir.
Q. What took place at the convention?
Mr. Abt: I object, your Honor.
The Court: He may answer the general question.
A. They elected members to the Party.
The Court: While you were there?
The Witness: Yes, sir.

64 A. (Continuing.) And the defendant is one of the ones that was elected to the State Board, one of the officers in the Party here in Illinois.

By Mr. O'Donnell:

Q. Was the defendant present at that convention?
A. I did not see him at the convention, no, sir. As I understood it, he was in the Armed Services at the time.
Q. Now, prior to attending this convention, was this convention discussed in the clubs of the Communist Party to which you belonged?
A. Yes, they had a lot of discussion on Revisionism.
Mr. Abt: Just a minute. That question called for yes or no.
The Court: No conversation.

By Mr. O'Donnell:

Q. Without reference to who said what, you may answer as to whether or not discussion took place.
A. Discussion took place on Revisionism.
Mr. Abt: Just a moment. It seems to me the answer is complete when he says discussion took place.
The Court: Sustained.

By Mr. O'Donnell:

65 Q. What took place in the discussion?
Mr. Abt: Objected to.
The Court: The subject matter, I take it. He may answer that.
A. They discussed the faults of the Party, and that they should change it back to Marxist-Leninist Revolutionary Theory.

Mr. Abt: If your Honor please, I move to strike the answer.

The Court: Strike it.

Mr. Abt: May I ask you to tell the jury to disregard it?

The Court: Anything the Court has stricken the jury will disregard all during this trial.

By Mr. O'Donnell:

Q. Was the convention that you attended discussed in the clubs prior to the time you attended the convention?

A. Yes, it was.

Q. What was the purpose of the convention that you attended? What was the purpose for which it was called?

Mr. Abt: Object.

The Court: Sustained.

66 Mr. O'Donnell: I would like to have this exhibit marked Government Exhibit 17.

(Whereupon said document was marked for identification Government Exhibit No. 17.)

By Mr. O'Donnell:

Q. Mr. Herron, I show you what has been marked as Government Exhibit No. 17, and ask you if you can identify that?

A. Yes, sir, I sent that in to the agent of the FBI.

Q. What is it?

A. It is a Communist paper published here in Chicago, at the time it was.

Mr. O'Donnell: At this time I would like to offer in evidence Government Exhibit 17, which is captioned "Line of March" of September of 1945, with particular reference —we will offer the entire document, but we only contemplate possibly reading, and not at this time, from pages 2, 4 and 5.

Mr. Abt: Objected to. No foundation has been laid of connection with the defendant.

67 The Court: Well, the testimony is that this was discussed at this meeting or convention.

Mr. O'Donnell: When the convention took place, that is right, your Honor.

The Court: I will admit it, subject to further identification.

Mr. Abt: If your Honor please, the witness has testified that the defendant was not present at that meeting.

The Court: I understand that. Further identification.

Mr. Abt: I am not sure I understand your Honor's ruling.

The Court: That they must—

Mr. Abt: Must show connection?

The Court: Yes, show the connection between the pamphlet and the defendant.

Mr. Abt: That is right.

By Mr. O'Donnell:

Q. Where did you receive the exhibit?

A. At one of the club meetings I attended after the convention.

Q. Thereafter you turned it over to the Government Bureau of Investigation?

A. Yes, sir.

68 Q. At this convention were these resolutions offered to the convention?

A. Yes, there were several resolutions.

Q. Were they passed on by the delegates there?

A. Yes, sir.

Q. Do you recall at this time any of the resolutions that were offered or passed?

A. Well, the Indiana delegation was combined with the Chicago or Illinois at that time, and they passed a resolution to split the two delegations, having Indiana as a separate unit, and separate from Illinois, one of them. They passed on taking the party back out of Revisionism.

Mr. Abt: I move to strike that.

The Court: Strike that.

By Mr. O'Donnell:

Q. I will ask you for the purpose of refreshing your recollection, have you ever heard of the Duclos letter?

A. Yes, sir.

Q. Was the Duclos letter discussed at that convention?

A. Yes, it was.

Mr. Abt: Object, your Honor.

69 The Court: Well, that may stand.

By Mr. O'Donnell:

Q. Were there any resolutions made at the convention concerning the Duclos letter, in which it was involved?

A. The whole convention was based on that Duclos letter.

Mr. Abt: Motion to strike.

The Court: Strike it.

By Mr. O'Donnell:

Q. Were there any resolutions passed at that convention with reference to the Duclos letter?

A. There were several resolutions. I don't recall offhand what all those resolutions were.

Q. I wish you would take a look at this exhibit once again, and direct your attention to page 5, in the right-hand column, and ask you to examine that.

A. I answered that, that that is one of them there. It is right on top there, about Revisionism.

Mr. Abt: I move to strike that.

The Court: Yes, strike out his answer.

By Mr. O'Donnell:

Q. I will ask you to take a look at that article, and
70 ask you if that represents what took place at that convention.

A. Well, they changed officers at the convention.

The Court: No, the question is: Did that take place, the article that was shown to you.

The Witness: Yes, sir. It is right in it. That took place at the convention.

By Mr. O'Donnell:

Q. Now, I will show you an article which appears on the bottom of page 4, and ask you to examine that, and ask you whether or not that was a resolution that was taken up and passed at the convention?

A. Yes, sir, it was.

Mr. O'Donnell: As to those two resolutions, I would like to offer this in evidence as to those two resolutions.

The Court: Well, have you offered the entire document?

Mr. O'Donnell: Yes, sir.

Mr. Abt: Same objection, your Honor; no connection.

The Court: Same ruling, unless it is connected.

71 Mr. O'Donnell: Connect it with the defendant, your Honor?

The Court: Yes, sure.

Mr. O'Donnell: The purpose of this man's testimony will, I think, become apparent later on. It will become connected by another witness.

The Court: If it is connected up, all right; otherwise, there will be a motion to strike.

Mr. O'Donnell: Thank you, your Honor.

By Mr. O'Donnell:

Q. I don't recall whether or not I have asked you this question or not, so I will ask it again. In 1945 was there a change in the name of the Communist Party?

A. Yes, sir.

Q. It was changed, if I recall your testimony, to the Communist Party, is that correct?

A. That is right.

Q. With regard to that organization, did anything else take place within the party after that change in the name, or at the time of the change?

A. They started sending—well, they started put-
72 ting the Communists through school, Marxist school.

Mr. Abt: Object to that.

The Court: Strike it.

By Mr. O'Donnell:

Q. Have you ever attended schools of the Communist Party?

A. Yes.

Q. When did you attend the school?

A. I attended one in 1946. I attended two, I guess.

Q. After 1945, or 1945 and thereafter, how often did you attend club meetings?

A. The regular meeting I attended every two weeks, and of course, I went many more times I was invited to.

Q. Will you describe briefly what took place at the club meeting at that time?

Mr. Abt: Objected to.

The Court: What took place?

Mr. O'Donnell: At a club meeting.

The Court: Sustained. That is too general.

Mr. O'Donnell: All right.

By Mr. O'Donnell:

Q. I will ask you this, did you have educational
73 discussions at Communist Party club meetings?

A. Yes, sir.

Mr. Abt: Objected to.

The Court: Well, that may stand. He has answered.

By Mr. O'Donnell:

Q. Now, in those educational discussions or meetings, what took place?

Mr. Abt: I object, your Honor.

The Court: He may answer that.

By the Witness:

A. We had an instructor. They instructed us in the different books, Marxist-Leninist books, and Capital. We had Capital in different books.

Mr. Abt: The witness dropped his voice. I did not hear his answer.

The Court: You will have to keep your voice up.

By the Witness:

A. (Continuing.) We were instructed out of pamphlets and books that the Communist Party put out on the revolutionist theory and discussed Revisionism.

Mr. Abt: Move to strike.

The Court: Strike out the last of it.

74 By Mr. O'Donnell:

Q. Can you at this time recall the names of some of the books used?

A. Yes, sir.

Q. Would you mind naming those?

A. We had "Political Affairs." We had "The Worker," and "The Daily Worker."

Q. I might interrupt at this time. What was "Political Affairs"?

A. That was a little monthly magazine that was put out by the Communist Party.

Q. Was that sold and distributed and circulated in the Communist Party?

A. Yes, sir, and it is also in the union halls where the Communists work, they passed it out and solicited subscriptions to it.

Q. You mentioned "The Daily Worker." What is "The Daily Worker"?

A. That is the paper printed in New York. It is a Communist paper.

Q. Was that distributed and circulated in the Communist Party at that time?

A. Yes, sir, in the Communist Party.

75 Q. Were the members urged to read that?

A. Yes.

Q. And what is "The Worker"?

A. Well, "The Worker" is the Sunday edition of "The Daily Worker." They call it "The Worker" on Sunday.

Q. Was "The Worker" and "The Daily Worker" distributed and circulated throughout the Communist Party?

A. Yes.

Mr. Abt: Object. This witness does not know what happened throughout the Communist Party.

The Court: Sustained.

By Mr. O'Donnell:

Q. Was it circulated at the club meetings that you attended?

A. Yes, sir.

Q. Were the members urged to read it?

A. Yes.

Q. Were they urged to sell it and obtain subscriptions?

A. Yes, pass it on to people.

Q. In addition to these periodicals you have just
76 mentioned, were there any other books or pamphlets used?

A. There was "Value, Price and Profit," was one. "The Foundations of Leninism." "A History of C. P. S. U." There were many more of them.

Q. For the purpose of refreshing your recollection, I would ask you if "State and Revolution"?

A. Yes.

Q. "Communist Manifesto"?

A. Yes, sir.

Q. "Foundations of Leninism"?

A. Yes.

Q. "Problems of Leninism"?

A. Yes.

Q. In addition, were other books and pamphlets used?

A. Many of them.

Q. Now, directing your attention to the defendant Lightfoot, did you ever attend any meeting at which he was present?

A. Yes.

Q. Do you recall at this time when the meeting was?

A. Yes. That was in Temple Hall on Marshfield, 330, I think, South Marshfield. I attended one meeting that he was there.

77 Q. Do you recall what year that took place?

A. It was, I believe, in 1946, 1946 or 1947.

Q. Do you recall whether there were other parties present in addition to the defendant?

A. Oh, yes, there were about 800 or 1,000 Comrades there.

Q. Were there any speakers there?

A. Yes.

Q. Without mentioning their names, do you recall some of their names at this time?

A. A few of them.

Q. Can you recall at this time what was said at the meeting by any of the speakers?

A. Comrade Lightfoot made a speech, too.

Mr. Abt: Just a minute. I think that calls for a yes or no answer, your Honor.

The Court: Yes or no?

The Witness: Yes.

The Court: All right.

By Mr. O'Donnell:

Q. Did Lightfoot speak?

A. Yes.

Q. What did he say?

A. Well, he said that he had been wrong in not
78 wanting to organize the Party more, and he felt that they should get out to organize, especially on the South Side, and that they should challenge Harlem in New York, to see if they couldn't get more members than Harlem could.

Q. Do you know what position Lightfoot held in the Party at the time?

A. I do know that he was one of the, he was on the District Committee some place. I don't know what position.

Q. Do you know in addition to that position whether he had other positions?

A. I do not.

Mr. O'Donnell: Will the reporter mark these Exhibits 18 to 23?

(Whereupon said documents were marked for identification, respectively, Government Exhibits 18, 19, 20, 21, 22 and 23.)

By Mr. O'Donnell:

Q. I show you what has been marked Government Exhibit 18 for identification, and ask you if you can identify that?

A. Yes, sir.

79 Q. What is it?

A. It is the "Communist Manifesto."

Q. Was that book distributed and circulated throughout the Communist Party?

A. Yes.

Mr. Abt: Object, your Honor.

The Court: You mean on the ground it is not connected with the defendant?

Mr. Abt: Not connected with the defendant, in the first place; and secondly, this man has not shown foundation for what has or has not been done throughout the Communist Party.

The Court: No, no.

Mr. O'Donnell: I will limit it to his knowledge.

The Court: No, not to his knowledge, even. He may testify what he knows about it.

The Witness: Well, do you want me to testify what I know about it?

The Court: No.

By Mr. O'Donnell:

Q. Was the "Communist Manifesto" one of the books that was used in your club?

80 A. Yes.

Q. In your education, the discussion of it, which you have testified to?

A. Yes.

Mr. O'Donnell: On that basis, I offer it, on the previous testimony this was among the books that were used.

Mr. Abt: Have you made an offer?

Mr. O'Donnell: Yes.

The Court: Submit your offers, all of them, if you are going to.

Mr. O'Donnell: I will offer all of them on the same basis of his testimony previously.

The Court: That they were discussed at the meetings which he attended?

Mr. O'Donnell: They were used, circulated, distributed at his club, and discussed at these meetings on education.

The Court: Name them for the record.

Mr. O'Donnell: "The Communist Manifesto" is Exhibit 18; "Foundations of Leninism," Exhibit 19; another copy of "Foundations", another edition, Exhibit 20;

"Problems of Leninism," Exhibit 21; "History of the

81 Communist Party of the Soviet Union," Exhibit 22, and "State and Revolution," Exhibit 23.

The Court: Any comment, Mr. Abt?

Mr. Abt: May I have just a moment, your Honor. Just

a small matter, but I don't understand offering two copies of the same book.

Mr. O'Donnell: We will withdraw one, if there is any question on that.

The Court: Which one?

Mr. Abt: Which one, so we will know what we are doing here?

The Court: What number?

Mr. O'Donnell: No. 20.

The Reporter: Exhibit 20 is withdrawn?

Mr. O'Donnell: Yes, at this time.

Mr. Abt: I object to the offer of all of these exhibits at this time on the ground hat no connection has been shown with the defendant.

The Court: I will reserve my ruling until there is a connection with the defendant Lightfoot as to these books.

82 Mr. O'Donnell: Your Honor, I submit the testimony of this witness is to the effect that Mr. Lightfoot is a member of the District Committee of the Communist Party, was a member at that time, and I think subsequent evidence will show what are the duties of the District Committee.

The Court: I will pass on it at that time.

Mr. O'Donnell: All right.

The Court: I reserve my ruling.

We will recess until 2:00 o'clock this afternoon.

(Whereupon a recess was taken until 2:00 o'clock P. M. of this day, Wednesday January 12, 1955.)

83 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—54-Cr-262) * *

Before Judge Philip L. Sullivan and a jury.

Chicago, Illinois,
Wednesday, January 12, 1955
2:00 o'clock p. m.

Court met pursuant to recess.

Appearances:

Mr. Parsons,
Mr. O'Donnell,
on behalf of the Government;
Mr. Abt,
Mr. Crockett,
Mr. Clayton,
on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

84 GARFIELD HERRON, a witness on the part of the Government, being previously duly sworn, resumed the stand, was examined and testified further as follows:

Direct Examination (Resumed).

Mr. Abt: If your Honor please, there are a couple of preliminary matters, if I may.

I wonder if there would be any objection if Mr. Leon Katzen, who is not a member of the bar but who is assisting us with exhibits, and so forth, sat with us at the counsel table?

The Court: That is all right. Designated by you?

Mr. Abt: Pardon, your Honor?

The Court: Designated by you?

Mr. Abt: Designated by us, yes.

The Court: Yes.

Mr. Abt: Second, your Honor, there is some confusion among us counsel as to your Honor's ruling on Govern-

ment's Exhibit 17, which is this Line of March for September, 1945. I had understood you to say that
85 you were reserving your ruling on it subject to connection. I think others of counsel thought that you admitted it or allowed it in evidence subject to connection.

The Court: I think on that that I allowed it in evidence. However, if it is not connected I will listen to you on a motion to strike.

Mr. Abt: O. K.

The Court: And the others were reserved.

Mr. Abt: And the others were reserved.

The Court: Yes.

Mr. Abt: That clears it up.

The Court: You may proceed.

Mr. O'Donnell: There is just one other point, I might mention it, as to these records of the banks and so forth, that were the preliminary exhibits offered. I wonder if we could have those photostated and offer to substitute photostats?

Mr. Abt: No objection, but will you give us copies of the photostats?

86 Mr. O'Donnell: All right. We can do that, I think.

The Court: All right.

Mr. O'Donnell: I might also indicate, as long as we are on that point, that there will probably be from time to time some exhibits we would like to substitute photostats for.

Mr. Abt: I have no objection, of course, your Honor.

The Court: That is all right.

Mr. Abt: If your Honor please, before cross-examination I should like at this point to move to strike all of the testimony of the witness Herren with the exception of his testimony with reference to the speech made by Mr. Lightfoot at the meeting of 800 or 1,000 people, on the grounds that none of his other testimony is connected in any way with the defendant.

The Court: Denied.

On that subject of connection and other matters, there are other exhibits that I reserved ruling on.

Mr. Abt: Yes.

87 The Court: Have you finished your examination?

Mr. O'Donnell: Yes, your Honor.

Mr. Abt: Your Honor, I am not familiar with the practice. Does counsel stand to examine?

The Court: No. That is all right. You may be seated so far.

Mr. Abt, who is the gentleman and where is he, so I may identify him? His name is—

Mr. Abt: Leon Katsen.

The Court: How do you spell the last name?

Mr. Abt: K-a-t-s-e-n.

The Court: All right.

Cross-Examination by Mr. Abt.

Q. Mr. Witness, as I understood your testimony this morning, you joined the Communist Party at the suggestion of two agents of the Federal Bureau of Investigation, is that right?

A. Yes, sir.

88 Q. They approached you in the spring of 1944?

A. Yes, sir.

Q. And suggested that you join the Communist Party?

A. Yes, sir.

Q. And they suggested that you join the Communist Party in order to make reports to the Federal Bureau of Investigation?

A. Yes, sir.

Q. And at that time you were working at the Douglas Aircraft plant, is that right?

A. Yes, sir.

Q. Were you a member of the union in that plant?

A. Yes, sir.

Q. What union?

A. UAW-CIO, Local 201.

Q. Then as I understand you, pursuant to the suggestion of the FBI, you did in fact join the Communist Party in the summer of 1944, is that right?

A. That is right.

Q. And you reported to the FBI on your activities in the Communist Party, is that right?

A. That is right.

89 Q. How frequently did you make reports?

A. I made a report every meeting that I went to, I reported.

Q. And you reported to the FBI the names of persons who you believed to be members of the Communist Party, did you not?

A. Those that I reported, the ones that attended the Communist meetings.

Q. You reported persons who attended Communist Party meetings?

A. That is right.

Q. With you?

A. Yes, sir.

Q. Were any of the people who attended Communist Party meetings with you, your friends?

A. Yes, sir.

Q. And you reported their names?

A. Yes, sir.

Q. Were any of the people who attended Communist Party meetings with you shopmates of yours at Douglas Aircraft?

A. All that attended the closed sessions of the meetings, yes, I reported.

Q. Including shopmates of yours at Douglas?

90 A. That is right.

Q. Is that right?

A. Yes.

Q. Did you engage in any sale of the Worker, the Daily Worker?

A. I passed it out at times with other comrades, yes.

Q. And did you report to the FBI the names of people who took the Worker, the Daily Worker, from you?

A. Yes.

Q. Is your answer "Yes"?

A. Yes, sir.

Q. And when you distributed the Daily Worker, the Worker, to people, you told them it was a good paper, didn't you?

A. No, sir, I didn't tell them it was a good paper. I went with other comrades and we passed them out at different places, I went and passed them out with the rest of them, just like—

Q. Didn't you and the others—just a moment, Mr. Witness, until I finish my question.

The Court: Go ahead.

By Mr. Abt:

91 Q. Didn't you or the people with whom you went tell the people whom you were giving the Daily Worker to, that it was a paper they ought to read?

A. I never told them it was a paper they ought to read. The other party members did.

Q. And you were with them when they told them that?

A. That is right.

Q. And then you reported the names of the people who took the paper to the FBI, is that right?

A. Anybody I knew that was subscribing to it, was a party member and attended party meetings, I reported them, yes.

Q. You reported the names of the people who took the Daily Worker from you and the other people you were with?

A. If they were party members and attended party meetings, yes.

Q. Now, did you solicit any people to join the Communist Party?

A. No, sir.

Q. You never did?

A. Never.

Q. Did you attend meetings of your local union of
92 the UAW?

A. I attended all the meetings of the union, yes, sir.

Q. Did you report those meetings to the FBI?

A. No, sir.

Q. Now, you started reporting to the FBI when?

A. In the spring of 1944.

Q. The spring of 1944?

A. Yes, sir.

Q. That was before you actually joined the Communist Party?

A. That is right.

Q. And you continued to report to the FBI until when?

A. The summer of 1947.

Q. The summer of 1947?

A. Yes.

Q. So that was a period of approximately three years, right?

A. Yes, sir.

Q. How many names of people did you report to the FBI during that period?

A. I wouldn't say how many I reported. There was plenty of them.

93 Q. Plenty of them?

A. Yes. I don't have a list with me. I couldn't say just how many.

Q. Did you attend any caucus meetings of your union, of the UAW?

A. Yes, sir.
Q. Did you report the names of the people who were at that caucus meeting?
A. Only when it was attended by Communists.
94 Q. Now, did you ever make any arrangement with the FBI for compensation, for pay, for the work you were doing for them?
A. Yes, they paid me for my expenses for what I did.
Q. They paid you for your expenses for a while?
A. That is right.
Q. And what were your expenses?
A. Well, at first I wasn't going to many meetings, and at first they used to give me $5 a month for gasoline and literature and things that I got.
Q. Did there come a time when they gave you a raise?
A. Oh, yes, quite frequently, as I attended more meetings, I was attending the regular meetings in the club every two weeks, and then sometimes I was going to meetings as many as two or three a week, and I was losing time from work, even, going to the meetings.
Q. How much of a raise did you get?
A. Well, the top that I got was $65 a month.
Q. $65 a month?
A. Yes.
Q. How long did you get $65 a month?
A. I don't know for sure how long it was. It was
95 a year or so maybe.
Q. A year or so?
A. Yes, sir.
Q. So you were gradually increased from $5 a month.
A. That is right.
Q. Up to $65 a month, is that right?
A. That is right.
Q. And for the last year you were getting $65 a month?
A. That is right.
Q. For reporting to the FBI?
A. Yes, sir.
Q. And you say you stopped reporting to the FBI in 1947?
A. Yes, sir.
Q. When was that, when in 1947?
A. It was in the summer, around July or August; July, I guess.
Q. That was when you moved out of Chicago?

A. Yes, sir.
Q. Whegs back to Hot Springs?
A. Yes, sir. My wife had rheumatic fever and we had to leave for her health.
Q. And since that time you haven't had any membership or activity in the Communist Party either, is that
96 right?
A. No, sir, I never paid up after that, I just dropped it all.
Q. Who approached you with reference to your testifying in this case, Mr. Witness?
A. Oh, it was an agent of the FBI.
Q. When was that?
A. Oh, about a week ago.
Q. A week ago?
A. Yes, sir.
Q. What did he tell you?
A. Sir?
Q. What did he tell you?
A. He said he was going through with the Comrade Lightfoot's case, and if I would testify.
Q. The agent said "Comrade Lightfoot"?
A. Yes, sir.
Q. He did?
A. Yes.
Q. And you said you would testify?
A. Yes.
Q. And did you discuss with that agent your testimony?
A. Well, I discussed what I knew of the case, a little,
97 some of it. He asked me a few questions.
Q. Did you meet with Mr. Parsons or Mr. O'Donnell?
A. I have seen them since I have been here in court, yes.
Q. Did you discuss your testimony with them?
A. For the time that I knew them, and—
Q. Did you discuss with them what questions they might ask you and what you would answer if you were to testify here?
A. No, sir.
Q. You had no discussion with them at all about it?
A. Yes, I say I talked with them and told them what I knew about the man, that is all.
Q. How much time did you spend with them?
A. Very little.

Q. An hour?

Mr. Parsons: Perhaps, may it please the Court, perhaps counsel would want to separate out the time that the witness spent with me and that the witness might have spent with Mr. O'Donnell.

The Court: He may ask the general question, how much time he spent with both of them.

98 Mr. Abt: I am trying to make it fast, your Honor.

By the Witness:

A. Perhaps an hour, I would say.

By Mr. Abt:

Q. An hour with the two of them?

A. Yes. I don't hardly think it was an hour, because this gentleman was busy, he was going and coming when I was talking with them, I mean he had other business to attend to. I don't think it was an hour altogether.

Mr. O'Donnell: You were talking with me?

The Witness: Yes. Is that right? Probably about an hour altogether.

By Mr. Abt:

Q. About an hour altogether?

A. Yes.

Q. Are you being paid to testify here?

A. No, sir.

Q. Have you ever discussed arrangements—

A. No, sir.

Q. —for being paid to testify here?

A. No, sir.

Mr. Abt: That is all, your Honor.

The Court: Call the next. I suggest that you have
99 one of your associates call the next witness that you will have available.

The Witness: Can I go now?

The Court: Yes.

Mr. O'Donnell: Can we have just a moment, your Honor? We might want to ask one question on redirect.

The Court: All right. Just sit down.

Mr. O'Donnell: He may be excused.

(Witness excused.)

The Court: Call the next witness.

I noted the witness was in the courtroom. There is an order of exclusion. Wasn't he sitting over here?

Mr. O'Donnell: Did you just come in?

Witness Meyer: Just came in about a minute ago, sir.

The Court: All right.

Mr. Parsons: The witness, your Honor, just came into the courtroom about a minute ago. I suppose there was a stall on our part as to whether or not we were ready for him.

The Court: All right.

Mr. Parsons: Would you take the stand?

100 The Court: Were you sworn?

Mr. O'Donnell: He hasn't been sworn yet.

The Court: Are there any other witnesses out in the witness room?

Mr. O'Donnell: No, your Honor. I contemplate we will go through the afternoon with this witness.

The Court: With this witness?

Mr. O'Donnell: Yes.

The Court: You may be sworn.

FRANK S. MEYER, called as a witness on the part of the Government, being first duly sworn, was examined and testified as follows:

Direct Examination.

The Court: What is your name?

The Witness: Frank S. Meyer.

The Court: How do you spell that?

The Witness: M-e-y-e-r.

The Court: Where do you live?

The Witness: Woodstock, New York.

The Court: Woodstock, New York?

The Witness: Yes.

The Court: What do you do?

101 The Witness: I am a writer.

The Court: For whom?

The Witness: I am a free-lance writer for a number of magazines. I am just completing a project for the Rand Corporation of Washington.

The Court: Rand?

The Witness: R-a-n-d. And I am also writing a history of the United States on a grant from the William Vogel Fund, from California.

The Court: And employed by whom?

The Witness: It is a fellowship, a grant, in both cases.

The Court: What magazines and publications have you written for?

The Witness: I have written for Thee Freeman of New York, the American Mercury of New York, I have done book reviews for the New York Times Book Review and the Saturday Review of Literature Book Review, I write for Classic Features, which is a book review syndicate.

102 I think that is about all. I may have written for one or two other magazines here and there.

The Court: Proceed.

By Mr. O'Donnell:

Q. Mr. Meyer, where were you born?

A. Newark, New Jersey.

Q. When?

A. May 9, 1909.

Q. And what formal education have you had?

A. I went to Newark Academy, Newark, New Jersey, up to about 1925, then I went to Princeton University, spent about two years there. I traveled for a year or so. I went to Oxford University, Balliol College, took my Bachelor's degree there in 1932, and have since taken a Master's degree from Oxford. I have done graduate work at the London School of Economics and the University of Chicago.

Q. Mr. Meyer, were you at any time a member of the Communist Party of the United States?

A. I was.

Q. Where and when did you first join the Communist Party or Communist movement?

A. I joined the Communist Party of Great Britain in the winter of 1931-32 at Oxford.

103 Q. Prior to the time you officially joined the Communist Party had you ever been associated with or affiliated with any other Communist group?

A. Well, I had founded and been the president of a club at Oxford University called the October Club, a few months earlier.

Q. What type of activities were carried on in that organization?

A. Well, it was a university club technically for the study of Communism, actually for the propaganda of Communism.

Q. Were you associated with any Communist Party groups while you were attending the London School of Economics?

A. I was.

Q. Will you describe the circumstances?

A. While I was in the London School of Economics, that would be 1932 to 1934, I was a member of the Party group, Communist Party group in the University. I was secretary of the National Student Bureau of the Communist Party of Great Britain. I was co-opted to the Central Committee of the Communist Party of Great Britain, and I worked particularly one summer with the
104 Secretariat of the Young Communist League of Great Britain. I also did some other Party activity in London and thereabouts. I was a member of the District Committee, London District Committee of the Party.

Q. Referring to the London School of Economics, did you leave the school voluntarily?

A. No, sir, I was expelled.

Q. Why were you expelled?

Mr. Abt: I object, your Honor.

The Court: Sustained.

The Witness: I was the president—

Mr. O'Donnell: I believe the objection was sustained to that question.

The Witness: I am sorry.

The Court: Sustained, yes.

By Mr. O'Donnell:

Q. Did you thereafter leave England?

A. In 1934 I left England.

Q. Where did you go after you left England?

A. I went to Paris for a few months.

Q. Was that trip in connection with your Communist Party activities?

Mr. Abt: Objection.

105 The Court: He may answer. It is leading but he may answer.

By the Witness:

A. I worked that late spring and early summer in Paris—

Mr. Abt: Your Honor, that question calls for a yes or no answer.

The Court: Pardon?

Mr. Abt: I take it that question calls for a yes or no answer.

The Court: Yes, yes or no.

The Witness: Would you repeat your question, sir?

By Mr. O'Donnell:

Q. Was your trip to France in connection with your Communist activities?

A. Yes.

Q. And what was the object of the trip?

Mr. Abt: Objection.

The Court: Sustained.

106 A. I worked for a few months in the Communist Fraction within the International Committee Against War and Fascism, whose International headquarters are in Paris.

Mr. Abt: I understood you sustained the objection to the question?

The Court: No, I said he may answer.

By Mr. O'Donnell:

Q. Was the organization to which you just referred a Communist organization?

Mr. Abt: Objected to, conclusion.

The Court: He may answer.

A. It was an organization whose activities were totally controlled by the Communist Fraction. I mean, it was not itself technically a Communist organization; it was what known as a front organization.

By Mr. O'Donnell:

Q. How long did you remain in France?

A. I would say about three or four months.

Q. Where did you go after you left France?

A. I came back to the United States.

Q. And do you recall the year and month?

A. Yes. That would be July of 1934.

Q. After you returned to the United States, did you become a member of the Communist Party of the

107 United States?

A. I did.

Q. And under what circumstances?

A. I had a transfer to the Communist Party of the United States in the form of a letter of introduction from the Secretary General of the Communist Party of Great

Britain to the Communist Party of the United States, and I presented that letter at national headquarters.

Q. Did you know the contents of that letter?

A. Yes.

Q. Do you have it now?

A. No.

Q. When you presented that letter, to whom did you present it?

A. It was presented—first, I was ushered into Jack Stachel, who was national organization secretary of the Communist Party in the United States.

Q. Did you talk or have conversations with any of the members of the Communist Party at Communist headquarters at that time?

A. Yes, various men.

Mr. Abt: The question has been answered when he said, "Yes."

108 The Court: Yes.

By Mr. O'Donnell:

Q. Where was the headquarters at that time, if you recall?

A. It was in the Communist Party building, between 12th Street and 13th Street—it goes from one side to the other—right off of University Place in New York.

Q. What did you discuss at the Communist Party headquarters after you presented the letter and had met Jack Stachel?

Mr. Abt: Object, your Honor.

The Court: He may answer what he discussed, but not any conversation.

Mr. O'Donnell: All right.

A. We discussed the question of my future party activities in the United States.

By Mr. O'Donnell:

Q. After having this discussion, were you given an assignment by the Communist Party?

A. I was assigned by Jack Stachel to work with the Young Communist League, because student activities in the United States, unlike those in Great Britain, was
109 under the Young Communist League, and not the party.

The Court: The last part may go out.

By Mr. O'Donnell:

Q. What, specifically, were you assigned to do at that time?

A. By Jack Stachel I was finally introduced to the secretary of the Young Communist League, Gil Green, and there was no immediate decision made as to what I would do. I did a number of odds and ends of things in the first two or three months in the United States.

You wish me to go on with what my assignment finally was?

Q. Yes, please.

A. I did a few odds and ends of things of one sort and another around New York. The decision as to what my assignment would be was postponed until I went to Canada to attend a session of the National Canadian Students League in the Canadian anti-war movement, at which time, at the same time, there was a convention of the Young Communist League of Canada. At that time discussion took place in which my work was decided between the
110 three or so leaders of the United States Young Communists who were there representing the Young Communist League of the United States. And then it was decided that I should go to Chicago, that I should continue to study as a graduate student, should help in the preparation of the youth part of the second United States Congress Against War and Fascism, which was then being held in Chicago; and as the result of that discussion and what happened when I went to Chicago, it was decided I would stay in Chicago, continue some graduate work at the university, become a member of the District Bureau of the Young Communist League of Illinois and Indiana, and work in the anti-war movement, of which I became the secretary of the youth section.

Q. What year was that that you came to Chicago?

A. 1934.

Q. Do you recall the month, approximately?

A. I would say late September.

Q. You mentioned the Young Communist League. At that time what was the Young Communist League?

A. Essentially the youth section of the Communist Party.

Q. After you arrived in Chicago, were you given
111 any assignment by the Communist Party?

A. Well, the assignment I was given by the Communist Party I have just described at that time.

112 Q. Can you identify the defendant Claude Mack Lightfoot?

A. I can, yes. The second person from Mr. Abt at the table.

The Court: Can you admit he pointed out Lightfoot?

Mr. O'Donnell: Will you stipulate to that?

Mr. Abt: We do.

Mr. O'Donnell: Stipulated the record may show the identity of the defendant.

By Mr. O'Donnell:

Q. At the time did you attend the University of Chicago as a student?

A. Yes.

Q. Or after this time?

A. Yes, sir.

Q. After you came here?

A. Yes.

Q. When did you first meet the defendant Lightfoot?

A. I would say within a few days or a week or two after arriving in Chicago.

Q. Was that in connection with your activities in the Communist Party?

A. Yes.

113 Q. Over what period of time have you known or did you know the defendant?

A. I would say from then to roughly up to about the time I went in the Army in 1942.

Q. Do you know if the defendant Lightfoot during that period held any position in the Communist Party?

A. Yes.

Q. At that time in Chicago, in the State of Illinois, was there a section of the Communist Party, or division or part of the Communist Party?

A. I am sorry. Will you repeat the question?

Q. Well, I will ask you this question: What position, to your knowledge, did the defendant Lightfoot hold in the Communist Party during the time that you were a member and were acquainted with him?

Mr. Abt: Object to that on the ground that all antedates the indictment period.

The Court: When?

Mr. Abt: The witness said he last saw him in 1942. The inquiry was directed to the period between 1934 and 1942.

Mr. Parsons: I think it is quite pertinent to knowl-
114 edge to go into the life of the defendant as much as we can, to show it.

The Court: Objection overruled.

The Witness: The question I believe is—

By Mr. O'Donnell:

Q. I will ask you this question, and have the reporter strike the last question. I will ask you this: How often did you see the defendant Lightfoot over that period?

A. Varying in periods, too, I think, because some of the time I worked very closely with him, other of the times simply from time to time; at some times several times a week, at other times once a week, once a month, and other times again very closely, and at times he was not in Illinois.

Q. Do you know what positions the defendant held in the Communist Party during that period?

Mr. Abt: If your Honor please, may I have a continuing objection to that?

The Court: Yes, that may stand. The objection to that line of testimony may stand, that is to say, to the fact of the dates before 1945. Counsel is objecting to that, and I am overruling the objection, and he wants the ob-
115 jection to stand to all testimony, so he won't have to repeat the objection all the time.

Mr. Abt: Yes.

Mr. Parsons: That is our understanding.

A. When I first came to Chicago, Claude Lightfoot was section organiser of the Young Communists League on the South Side, and a member of the District Bureau of the Young Communists League, and also a member of the Section Committee of the Party on the South Side.

At a later period he became section organiser of the Party on the South Side; was for a considerable part of that time member of the District Committee of the Party in Illinois and Indiana; and though I can't remember the exact functions at one point or another, in the latter period did work in the district leadership itself as distinct from the Section.

By Mr. O'Donnell:

Q. You refer to the District. What was the District at that time?

A. Illinois-Indiana District.

Q. Of the Communist Party?

A. Of the Cummunist Party.

116 Q. Mr. Meyer, after coming to Chicago and becoming active in the Communist Party activities in Chicago, what positions did you hold?

A. During the first period that I was in Chicago, I have already mentioned them. Somewhat later in—late 1935 or early 1936—I became a member of the South Side Section Committee of the Party and educational director of the South Side Section.

In 1938 I became director of the Chicago Workers School, and educational director of the Illinois-Indiana District.

In about, I would say, 1941, I was membership director of the Illinois and Indiana District, and assistant organizational secretary of the Illinois-Indiana District.

Q. What were your duties as educational director of the Illinois-Indiana District of the Communist Party?

A. I was responsible in that section of the Communist work which was called Agiprop work, and later educational work, which covers, oh, in the first place, our agitational and propaganda activities, leaflets, meetings, speeches, all forms of written and spoken or word propaganda;

117 and, secondly, the educational work within the Party itself in the sense of educational activities carried on in the particular branch; thirdly, schools and classes conducted directly or indirectly by the Party, including Party training schools; and, fourthly, a joint responsibility for personnel work within the Party. I believe that about roughly covers it.

Q. In connection with your activities as educational director, were you ever in contact with the defendant Lightfoot?

A. Yes.

Q. And what was the nature of that contact, what was your relationship?

A. Mr. Lightfoot taught at the Workers School during a good part of the time, and also taught a considerable number of the inner Party classes at one time or another.

Q. Before going into that, I would like to ask you this question: I believe that you testified there were some periods of time when you were not in contact with Mr. Lightfoot over a period of time. Do you recall at this time what the occasion was under which you were not

118 in contact, what the occasions were when you were not in contact with each other, and for what reason?

A. The only long period that I can remember distinctly is, I think it must have been in 1936, when he was a delegate to the Sixth Congress of the Young Communists International.

Q. What was the Young Communists International at that time?

A. The International organization of the Young Communists, affiliated with the Communists International.

Q. What was the Communists International at that time?

A. The Communists International is the world Communist Party, and of which the National Communist Parties were sections.

119 Q. Do you know of your own knowledge whether or not the Communist Party of the United States was a member of the Communist International?

A. It was affiliated with it until after the Voorhees Act was passed, I think that was in 1939, or 1940, is disaffiliated formally.

Mr. Abt: Just a moment. If your Honor please, on the basis of the witness's present testimony, I move to strike all reference to Mr. Lightfoot's attendance at the meeting of this International organization, since it now appears that in 1940 any relationship between the Communist Party and that international organization ceased, which was five years before the indictment period here.

Mr. Parsons: The disaffiliation, of course, coming after his attendance at the conference in Moscow, nevertheless the attendance is of some value on what he knew at the time, and what he knew during the statutory period. I believe it would go to his knowledge.

The Court: Denied.

120 By Mr. O'Donnell:

Q. One more question along this line, and that is, did he discuss with Mr. Lightfoot his attendance at the Sixth Congress of the Young Communist International?

A. Oh, yes.

Q. Now, you refer to several positions that Lightfoot held in the Communist Party during the time that you knew him, I believe, a member of the District Committee, as well as south side organizer. How were persons chosen for the position that he held, chosen or selected, or what was the basis on which they received those positions?

A. Technically and overtly, by an election by the area concerned; that is to say, a member of the District Committee is elected by District convention. A section organizer is elected by either a section committee or a section convention. In actuality—

Mr. Abt: Just a moment. I think the question has been answered.

The Court: I think the question has been answered.

121 Mr. Parsons: I think I heard the witness say "technically."

The Court: Then you go into actually.

Mr. Parsons: Another facet.

The Court: Another question may bring it out.

By Mr. O'Donnell:

Q. Based on your experience in the Communist Party, how was it actually done?

Mr. Abt: If your Honor please, that calls for a pure conclusion of the witness.

The Court: Yes, sustained.

By Mr. O'Donnell:

Q. Mr. Meyer, how did you receive your position in the Communist Party?

Mr. Abt: Objected to, immaterial.

The Court: He may answer.

A. Any positions on committees, in the same manner spoken; any other positions by concrete direct appointment by the responsible person, district organizer or section organizer.

By Mr. O'Donnell:

Q. Now, Mr. Meyer, directing your attention to the

122 Chicago Workers School, I believe you mentioned you were a director of that school. Was the defendant Lightfoot a member of that school or faculty of that school?

A. Yes.

Q. Did he instruct in the school?

A. Yes.

Q. What was the Chicago Workers School at that time?

A. The Chicago Workers School was a school open to Communists and non-communists alike, which was run by the party, for the teaching of Marxism-Leninism, and Marxist-Leninist interpretations of various social and

political questions. It was taught 95 per cent by Communist Party members.

Mr. Abt: If your Honor please, I think the witness has answered the question.

The Court: Well, that may stand.

By Mr. O'Donnell:

Q. Mr. Meyer, I believe you stated that your position was that of director of the school. What was your duty as director of the school?

A. Complete responsibility for the school, that is to say, organization, financing, curricular, teachers, courses, everything.

123 Q. Were you acquainted with all the persons who were teachers at that school?

A. I was.

Q. Did you engage in discussions with these other persons concerning the program of the school and what was to be taught?

A. General discussion with the District Bureau of the party and with the National Education Commission of the Communist Party.

Q. Did you have discussions with the instructors and teachers of the school concerning the courses that they taught?

A. Certainly.

Q. Did you have such discussions with Claude Lightfoot?

A. Yes.

Q. I would like to show you at this time a series of exhibits that have already been marked for identification, your Honor. They are all bearing on the one subject, and I am wondering whether I can show them to him all together, at least for his identification, and then show them to the defendant.

I show you Government Exhibit No. 32, and ask you if you can identify it.

124 The Court: You may show all of them to him, indicating what exhibits they are.

Mr. O'Donnell: 32, 33, 34, 35, 36, and 37.

The Court: Now, he has them. What is your question?

Mr. O'Donnell: I asked him if he could identify those.

125 The Court: Have you seen those before?

The Witness: I am looking at them all, sir. I have.

By Mr. O'Donnell:

Q. And without looking at each one, can you say in general what is contained in these exhibits that I just enumerated?

Mr. Abt: I object to that.

The Court: He may answer what the subject matter is.

Mr. O'Donnell: Just the subject matter of the exhibits themselves, not anything else.

The Court: All right.

A. This is a schedule of the Workers School courses for a given time.

By Mr. O'Donnell:

Q. During this period were you a director of the school?

A. I was.

Q. During this period was the defendant Lightfoot an instructor?

A. One of them I think was just after I ceased to be.

126 Yes, that one, either I was just about to cease to be a director, or I just had ceased, but I was responsible for preparing it, so I think the other is all.

The Reporter: Which one are you referring to?

Mr. O'Donnell: That is Exhibit No. 36.

The Court: Continue with your examination.

By Mr. O'Donnell:

Q. At this school did you use educational outlines or anything of that sort?

A. In most of the standard courses outlines were prepared.

Q. Did you prepare those outlines yourself?

A. Either prepared them myself, or adapted from school outlines prepared in New York by the New York Workers School or the National Schools Commission of the Party.

Q. Were these outlines as prepared by you based on a program of any type?

A. I am sorry. I don't recall the question.

Q. Were these outlines that were prepared for you, or were they prepared by you or under your supervision and control? Were they part of the basic program as set up?

127 A. I would say for most of the major courses there was a general understanding throughout the Party of the country with the National Educational Commission as to what subjects were to be generally covered, and in what general order, what books were to be generally used.

The adaptation of them to the particular need, the order of the presentation of the material, and the mode of it might vary, but not a great deal.

Q. I will show you at this time Government Exhibit No. 38 and ask you if you can identify that?

A. Yes.

Q. What is it?

A. It is an outline for a course on the history of the Communist Party of the SU, from the spring of 1941.

Q. Do you know where that outline was used?

A. It was used in the Workers School, and I believe also in some Party training courses at the time.

Mr. O'Donnell: I want to refer back to these exhibits with the witness, your Honor.

Mr. Abt: May we have just a few moments to look these exhibits over?

The Court: You mean before the examination?

128 Mr. Abt: Yes. Has he offered all of these or any of them?

The Court: None of them have been offered.

Mr. O'Donnell: I am going to offer them, yes, your Honor. I will offer them at this time.

Mr. Abt: You are offering them now?

Mr. O'Donnell: Yes. May I ask one preliminary question of the witness?

By Mr. O'Donnell:

Q. Do you recall what, if any, classes defendant Lightfoot taught at the school?

A. I think he taught Marxism-Leninism, History of the C. P. S. U., I think Political Economy, at least, and probably some special courses on the Negro question.

Q. Did you discuss the courses that he was to teach with him prior to the time he taught the courses?

A. Yes.

Q. During that period would you check on his instruction in the classes?

A. Perhaps less than with many teachers, because he was so good, but I would always make it a habit
129 to listen at least once or twice a term to what was going on in all the classrooms.

Q. I believe you testified previously that this was a school for the purpose of conducting teaching along Marxist-Leninist lines, is that correct?

A. Yes.

Mr. Abt: Have you made your offer now?

Mr. O'Donnell: Yes, sir.

Mr. Abt: If your Honor please, we object to the offer of Exhibits 32 through 37 for identification, which are the Workers School announcements of classes.

The Court: And the ground of your objection?

Mr. Abt: On the ground that all of those announcements fall outside of the indictment period here, being prior to 1945; that they are therefore extremely remote, irrelevant, and have no tendency to prove any issues tendered by the indictment.

The Court: I take it you expect to follow that up to date?

Mr. O'Donnell: Yes, that is correct. This is on the question of his knowledge and intent.

The Court: At that time?

130 Mr. O'Donnell: At that time, and it goes to his knowledge and intent as of today.

The Court: Do you expect to offer other evidence about that?

Mr. O'Donnell: That is correct.

The Court: It may be received.

(GOVERNMENT'S EXHIBITS 32 to 37 were received in evidence.)

Mr. Abt: As to Government's Exhibit 38, which was this outline dated April 1941, we object on the same grounds, and on the additional ground that no connection has been shown between this outline and the defendant, Mr. Lightfoot.

The Court: What do you say about that connection?

Mr. O'Donnell: I would like to answer this by referring to the exhibit, your Honor, if you will give me just one moment, please, to Government's Exhibit 35, and I believe is true of one or more of the other exhibits. Workers

131 School schedule of classes January 6th to March 22, 1941. On an inside page it refers to the schedule of classes, "History of the C. P. S. U. Instructor Claude Lightfoot."

Mr. Abt: Have you finished?

Mr. O'Donnell: Yes.

The Court: What connection is there on that?

Mr. O'Donnell: It is History of the C. P. S. U. This Exhibit No. 38 is Workers School, April 1941, "History of the C. P. S. U., Parts 1 and 2." I would like to ask Mr. Meyer if this exhibit was prepared for use—

The Court: "This exhibit." Give the number so the record will show it.

By Mr. O'Donnell:

Q. Exhibit 38, which I have in my hand, was prepared in connection with the course on the History of the C. P. S. U.?

A. Yes.

Q. Do you know whether or not defendant Lightfoot used this exhibit?

A. I can only presume so. I don't know specifically. He must have done so. It was prescribed for the school, and he was the teacher of the course. I cannot specifically remember at this point.

132 Mr. Abt: I will ask that the answer of the witness be stricken.

The Court: Strike it out.

Mr. Abt: And I renew my objection to the exhibit.

The Court: The others have been received?

Mr. O'Donnell: That is correct.

The Court: I will reserve my ruling on that for further evidence.

Mr. O'Donnell: I will offer this on the basis of the fact that it covers a period that is covered in the announcement of the Workers School. It is on the same subject, the same date, and in the witness's knowledge he did teach that course.

The Court: He said he assumed he did.

Mr. O'Donnell: Yes, he assumed he used this document.

The Court: That is not sufficient to have it admitted.

By Mr. O'Donnell:

Q. Mr. Meyer, I believe that earlier, or a few minutes ago, you referred to the fact that you did not have to check on the instruction of Mr. Lightfoot because his
133 background was very good.

A. I believe so. No, I did not check as thoroughly as I did on others I checked.

Q. And on what did you base that opinion of the background of Mr. Lightfoot?

Mr. Abt: Objected to.

The Court: Sustained.

134 By Mr. O'Donnell:

Q. Did you discuss Mr. Lightfoot's background, educational background in the Communist Party with him at any time?

A. Certainly.

Q. Do you recall at this time what he told you in that connection?

A. I discussed various theoretical and educational problems with him many times.

Mr. Abt: If we are having a discussion, may we get the time and place?

The Court: Yes.

Mr. Abt: And I assume, your Honor, my continued objection applies to all these conversations prior to the indictment period?

The Court: That is right, but in addition thereto, you should have the time of the conversation and who were present if you expect to go into a conversation.

135 By Mr. O'Donnell:

Q. Can you recall when and where you had a conversation or conversations?

A. I can recall a number of conversations about the theoretical content of courses on Marxism-Leninism and C. P. S. U. courses in the Workers School with Mr. Lightfoot on a number of occasions over the period when he was teaching. I cannot specifically date any single one of them.

Q. Now, Mr. Meyer, referring to the Chicago Workers School once again, the courses in the History of the C. P. S. U., what books were used?

Mr. Abt: If he knows.

By Mr. O'Donnell:

Q. In connection with the teaching of that course, if you know.

A. The primary book from the time it came out was the "History of the Communist Party of the Soviet Union, Short Course."

The Court: Is that the name of the book?

The Witness: That is the name of the book.

The Court: All right.

136 The Witness: In fact, those courses had their names changed from Marxism-Leninism to History of the C. P. S. U. only when the book did come out, and

were based on that book as a text book. In connection with that book, however, a number of Marxist classics were used chapter by chapter as they were referred to in the text—

By Mr. O'Donnell:

Q. You are referring to—

A. —as well as the "History of the C. P. S. U."

Q. And the defendant Lightfoot was instructor at this school?

A. That is right.

Q. Do you know whether or not he used—

A. I am certain he used that book.

The Court: Used what—

The Witness: "History of the Communist Party."

By Mr. O'Donnell:

Q. First I will show you Government's Exhibit 22 for identification and ask you if you can identify that.

A. I can identify that.

137 Q. And what is it?

A. "History of the Communist Party of the Soviet Union, Short Course," published by International Publishers, and it is the cheaper edition which was sold in very large quantities by the Party.

Q. Do you know whether or not the defendant Lightfoot used this in connection with his classes in the History of the C. P. S. U.?

A. I am sure he did.

Mr. O'Donnell: At this time I would like to offer this exhibit in evidence.

The Court: The jury may recess for a few moments.

(A short recess was taken.)

The Court: You may resume the stand, and proceed.

Mr. Abt: If your Honor please, I think when we adjourned or recessed the Government had made an offer of Exhibit 22, and I would like to object to that offer and state the grounds of my objection, if I may.

The Court: State them, yes.

138 Mr. Abt: It appears, your Honor, that Exhibit 22 for identification is a volume entitled "The History of the Communist Party of the Soviet Union". It is a book of 363 pages. It appears from the book that it is the history of the Communist Party of the Soviet Union starting in 1883 and ending in 1937.

Our first grounds of objection, your Honor, are that the contents of the book as well as its alleged use by the defendant are too remote, being outside of the indictment period.

We have, however, I think, a more fundamental objection to the offer than that, your Honor.

All that we have before us at this time is that Mr. Lightfoot made some kind of use of this book in a class that he taught sometime in the late 1930's or early 1940's. We have no evidence at this time, your Honor, as to what use he made of this book.

That being so, and the entire book being offered,
139 your Honor, we don't believe that it has any relevancy whatsoever to any of the issues tendered in the indictment.

Suppose, for example, your Honor, that Mr. Lightfoot had taught a class in American History in this school, and the Government offered a text book on American history that Mr. Lightfoot used, and that is all, in that class. It would seem to me clear that at least at this stage of the proceeding, the book would have no relevancy or materiality whatsoever.

At this time to offer a book of 363 pages on that kind of a foundation, if your Honor please, seems to me to at first have no place in this case, it would prove nothing at this juncture.

I don't know what the jury or your Honor is going to do with the book when it is in evidence. I am sure you are not going to read it, sir, and I am sure the members of the jury are not, and as I said, there is no evidence—

The Court: I have given that some thought.

140 Mr. Abt: Pardon me, your Honor?

The Court: I have given that some thought. What do you say about that?

Mr. Abt: Just let me say in closing, your Honor, that there is absolutely not a word of evidence here that Mr. Lightfoot made any use of this book in any fashion which would have any relevancy whatsoever to the charge contained in the indictment.

Mr. O'Donnell: In our opening statement, your Honor, Mr. Parsons pointed out one of the things that we were going to prove in this case was the fact that the Communist Party was based on, its philosophy or program was based on the science of Leninism and Marxism. This book, as

are others, are books that have been used in the Communist Party and are the basis of Marxism-Leninism as taught in the Party, first of all by the defendant, and by others.

As charged in the indictment, he is charged with being a member of society, a group, whihc has as its aims and purposes certain specific things. The witness has tes-
141 tified and we have exhibits which we have not identified yet, not as yet read to the jury, which indicate that Mr. Lightfoot taught a class in history of the Communist Party of the Soviet Union, one, among others.

Now, we have also testimony that in this class and one of the books he used in conducting this class was "The History of the Communist Party of the Soviet Union", this book.

In addition, the witness pointed out that many of these books were disseminated throughout the Communist Party at that time.

142 I think that on that basis alone the inference, not the inference, but it is conclusive, that Mr. Lightfoot must have known the contents of this book, and as I said, we were going to offer this book among others in support of our position of what they contained and what they used. The future use of these books and how they continued to be used by the Party will of course be elaborated on as the case proceeds.

Now, Mr. Abt referred to the fact that this is a long book. Your Honor will recall that we went at least preliminarily into this question in pretrial, and the Government indicated at that time that we would rely on the whole book. We don't intend to tear anything out of context. However, at your Honor's suggestion we did supply the defendant with a list of pages which we intend to read to the jury during the case, and which we felt reflected the intent and the use to which these books were put, and
143 we went to a great deal of trouble to do that.

However, I do feel that, and we have connected it up, this book with this defendant, with his knowledge of it, his use of it. As to how that bears on his intent, we will have continuing evidence along those lines. But the witness has already testified that this is one of the books that was used in the teaching of The History of the C. P. S. U., the Communist Party class, and I believe referred to the fact that it is used in Marxist-Leninist classes as well.

I think on that basis the book, there is no question about it, is admissible.

The Court: Do you have any other books you expect to offer?

Mr. O'Donnell: Yes, your Honor.

The Court: The whole book?

Mr. O'Donnell: Yes, your Honor.

The Court: Do you expect the Court and the jury to read all of the books?

Mr. O'Donnell: No, we do not.

The Court: What do you expect the Court and the jury to do with them?

144 Mr. O'Donnell: We expect to offer the books in their entirety, so there won't be any question in anybody's mind that what we read and what we rely on is torn out of context.

The Court: I take it that if that goes in evidence you are going to take certain pages and offer the certain pages, is that right?

Mr. O'Donnell: No, your Honor. Our position is we will offer the entire book—

The Court: Yes, I understand.

Mr. O'Donnell: But we will only read certain pages. We offer the entire book because we feel that if the jury should want to check other portions of the book, that is, assuming the case reached that position, they would be free to check any part of the book or any book we offer in evidence, if there is anything they want to read, to see if there is anything in those books that contradicts what we say the pages we read will represent or state.

145 Mr. Abt: If your Honor please, I think there are two problems here. One is the form of the offer, which in my judgment imposes an impossible burden—

The Court: I don't hear you.

146 Mr. Abt: One objection is the form of the offer, offering this whole book, which in my judgment imposes an impossible burden on your Honor and on the jury, and on ourselves.

It seems to me, however, that there is also another and more fundamental objection to its offer, at least at this time, and that is that no foundation whatsoever has been laid for that offer. The fact that Mr. Lightfoot may have used this book in a class that he taught has no relation whatsoever to any issue in this indictment, your Honor.

Let us assume, for the purpose of the argument, that there is something about force and violence in the Soviet Union or in Czarist Russia in this book. That fact certainly is no proof and can't be proof that Mr. Lightfoot knew that the Communist Party of the United States advocated force and violence in this country, your Honor.

Suppose, for example, to go back to my original example, that it was shown that Mr. Lightfoot taught a class in
147 American History, in which the Declaration of Independence was used. That also talks about force and violence, your Honor.

The question here is, what did Mr. Lightfoot teach with reference to that book and use of that book, if he taught anything with reference to the United States and its government, and as of this moment we have no foundation for that whatsoever, your Honor.

I don't say that all or at least portions of the book might not at some later stage in the trial be admissible once a proper foundation is laid, and that foundation in my judgment, your Honor, must be in terms of what Mr. Lightfoot taught on the basis of this book with reference to the government of the United States.

Mr. Parsons: May it please the Court, I have listened carefully to the testimony of the witness. There is positive identification that Claude Lightfoot used this textbook. He said "I am sure of it." He did not say that he might have. As to this book he was very sure. It is being offered only to show that he knew. There was a
148 school conducted, according to the testimony of this witness, by the Communist Party of the United States for the purpose of teaching Marxism-Leninism. Claude Lightfoot has been connected as a teacher in that school who taught this particular course and used this book as a textbook.

When it comes to proving the aims and objectives of the Party, which is another issue, it would be necessary, of course, to re-offer certain sections of this book for that particular purpose.

The Court: I will reserve my ruling on the offer.

Mr. Parsons: We have a very delicate problem as to—

The Court: —on the admissibility of that book. I might say now—

Mr. Parsons: We do have the difficult problem, I realize, your Honor, of whether or not we should put that entire

book in and say, "Now, you go out to the jury room and read this book."

The Court: It is impractical.

149 Mr. Parsons: It is, and we don't want to do that.

The Court: In addition to that, it is impossible to do that.

Mr. Parsons: That is right. At the same time, it is true that this witness has identified this as the particular text-book which has been taught by the defendant.

The Court: That the defendant used?

Mr. Parsons: That is right.

The Court: I think that is the testimony. It does not say what part of it.

Mr. Abt: Or how, your Honor.

Mr. Parsons: That is reserved, your Honor?

The Court: That is right.

Mr. Parsons: Thank you.

150 By Mr. O'Donnell:

Q. Mr. Meyer, what were the qualifications for teaching the courses at the Workers School such as History of the C. P. S. U., that is, the qualifications of the person who taught such courses as History of the C. P. S. U., No. 1, History of the C. P. S. U., part 2?

A. For those courses and two or three more like them of central political importance on a reasonably advanced level we would never have used any teacher who was not both politically reliable, that is to say, recognized by the Party as a politically reliable person, and theoretically skilled in Communist doctrine. I would say that most of the time, all of the time, those requisites at least would be required for those courses, and in almost every case I can remember of courses at that level they would be people that would be of fairly high level or Party rank.

Q. Did Mr. Lightfoot meet that qualification?

A. Yes.

Q. Those qualifications?

A. Yes.

Q. I believe just before the recess you referred
151 to the fact that in addition to "The History of the C. P. S. U." in these courses, other books were used, is that not correct?

A. That is right.

Q. Do you recall the names of any of these books at this time?

A. Well, in connection with particularly the first four or five chapters, to some degree with some of the later ones, but particularly with the first four or five chapters, as various standard works of Lenin and Stalin are mentioned, they are brought in and excerpts or all of them read as collateral reading material. This was also done in the History of the C. P. S. U. course.

In association with the first chapter or the second, "The Communist Manifesto" of Marx and Engels.

In connection with the chapters that have to do with the 1905 and 1906 period in Russia, "Two Tactics" of Lenin, a book called "Two Tactics" by Lenin.

In connection with various phases, Stalin's "Foundations of Leninism" and "Problems of Leninism."

152 In connection with the First World War period, Lenin's "Imperialism."

In connection with the period directly after the Russian Revolution, "Left-Wing Communism and Infantile Disorder", probably a number of others, but these are the ones that come to mind.

I am certain there were a number of others, but these are the ones that c e to my mind.

153 Q. Were these books in the program for the teaching of this course in The History of the C. P. S. U.?

A. Yes.

Q. And were these books used by the defendant Lightfoot in his instruction?

A. I am sure.

The Court: When you say "I am sure", does that mean you knew they were?

The Witness: I would say, your Honor, that it means that it would have been impossible for him to have prepared his courses thoroughly and properly, and I know he prepared them thoroughly from discussions with him, from discussions with the other teachers, without using these books.

Mr. Abt: Your Honor, I would then move to strike out the witness' answer on two grounds.

First, it is a conclusion of the witness. In addition to that, I gather he is now testifying only that his conclusion is that Mr. Lightfoot must have read the books, "I am sure." The question was whether the books were used in the class.

154 On those grounds I now move to strike out the witness' previous answers.

Mr. Parsons: We might, your Honor, get into a very detailed discussion on the science of knowledge, what constitutes knowledge. I may observe a person doing a thing and still not be able to say for sure that he is doing it. Knowledge is made up of those component parts of observation, such as those things which go into—

The Court: Yes, but did he use them?

Mr. Parsons: He said, "I am sure".

The Court: "I am sure."

Mr. Parsons: Yes, sir.

The Court: Then I asked him to explain what he meant by that.

Mr. Parsons: And I believe that explanation would stand in the halls of intelligence and learning throughout the world—

The Court: He said he must have.

Mr. Parsons: As a previous answer.

The Court: I know he said he must have used it.

Mr. Parsons: He said—

155 The Court: As I understood his testimony.

Mr. Parsons: He said it is impossible for him not to have used it.

The Court: You will have to go farther than that. You will have to develop that farther.

By Mr. O'Donnell:

Q. Do you know if he used that?

A. I do not have a distinct memory of standing in the classroom and seeing him use them on any given occasion, but insofar as I am sure of any phenomenon in my life, I know he used these books. I cannot say on the 4th of April of such and such a year I stood in the Workers School and stood in the back of the room and saw him pick out the parts and use them. Apart from that, certainly I know he used them.

Mr. Abt: Your Honor, I move to strike out the entire answer.

The Court: I think I will let that stand.

156 By Mr. O'Donnell:

Q. Mr. Meyer, you previously stated, I believe, that you knew Claude Lightfoot very well?

A. Yes.

Q. From time to time did you have discussions with him bearing on the Marxist-Leninist teaching?

A. On Marxist-Leninist theory, teaching, problems of Marxism-Leninism, theoretical questions, yes, many.

Q. And you stated he met the qualifications you have already outlined as instructor, is that not correct?

A. Very definitely.

Q. In the course of those conversations or discussions, did you discuss such books as "The Communist Manifesto", "Foundations of Leninism", "Problems of Leninism", and so forth?

A. Certainly, and often.

Q. I ask you if you can identify Government Exhibit 18 at this time.

A. Yes.

Q. That is "The Communist Manifesto"—

Mr. Abt: No. 18, Mr. O'Donnell?

Mr. O'Donnell: Yes, 18, "The Communist Mani-
157 festo."

By Mr. O'Donnell:

Q. "Foundations of Leninism"—

Mr. Abt: Will you give us the exhibit number as you show them to him?

By Mr. O'Donnell:

Q. 19.

A. Yes.

Q. "Problems of Leninism", No. 21, I believe?

A. Yes.

Q. "Left-Wing Communism and Infantile Disorder", No. 25?

A. Yes.

Q. "State and Revolution", Government Exhibit No. 23?

Mr. Abt: I call your attention, Mr. O'Donnell, to the fact that Mr. Meyer did not mention "State and Revolution" in the books that he gave.

The Court: I didn't hear that, Mr. Abt.

Mr. Abt: Mr. Meyer did not mention "State and Revolution" in this list of books he gave which presumably were used in connection with the class.

158 By Mr. O'Donnell:

Q. I will show you what has been marked as Government Exhibit 23 for identification, and ask you whether

or not the exhibit was used in the classes to which you have just been testifying?

A. Yes, in connection with the chapter of "The History of the C. P. S. U." concerned with the Revolution in the Soviet Union in 1917.

Mr. O'Donnell: At this time I would like to offer in evidence these books—

The Witness: I may note that one of those editions of "The Communist Manifesto" has a copyright date in this particular printing later than the time we are talking of, I did not see that particular cover, but the edition is the same. It is just a later printing.

Mr. Abt: Will you give me just one moment, your Honor, so that I may make a note?

The Court: Yes.

Mr. Abt: Your Honor, I object to the offer on the same grounds I urged in connection with Exhibit 22, and on the additional ground that, as I understand the witness' present testimony, it is only that he is sure, as sure as
159 he is of any phenomenon in nature that Mr. Lightfoot read these books himself in connection with the classes, but he has not testified that Mr. Lightfoot used the books in the classroom.

I object on that ground plus all of the grounds I urged with reference to Exhibit 22.

Mr. O'Donnell: I think he said just about as positively as any person can say that he knows he used them in the class, and he knows further, I asked him if they had discussed them personally, and he said they had. On that further ground I would offer these books, as to Mr. Lightfoot's familiarity and use of them.

The Court: The same ruling as to the others. I will reserve my ruling.

160 By Mr. O'Donnell:

Q. Now, Mr. Meyer, in addition to the Chicago Workers School, were there other educational programs carried out by the Communist Party during that period that you were active in the Party here in Chicago?

A. Many.

Q. To your knowledge, did Mr. Lightfoot teach at any of those schools?

A. To my knowledge, Mr. Lightfoot taught in a considerable number of classes, inner-Party training schools, et cetera, throughout that period, and certainly from 1938

to 1942, when I was responsible for the district educational program.

Q. Did he attend schools, to your knowledge?

A. To my knowledge he attended no schools in the American Party during that period.

Q. If I understood your testimony, the only schools at which he was present were those in which he taught?

A. Precisely.

Q. You refer to a district training school. What is a district training school, or what was it at that time?

A. A district training school was a school of four, five, six or eight weeks duration on a full-time
161 basis, taught by leading Party functionaries and teachers conducted, depending on the period, either very secretly or moderately secretly—

Mr. Abt: Object to that, your Honor.

The Witness: For the purpose of obtaining leadership—

Mr. Abt: I object to the characterization as a conclusion.

The Court: Sustained.

Mr. Abt: I move it be stricken.

The Court: All right.

Mr. O'Donnell: May I ask, your Honor, what characterization it is to which counsel refers?

Mr. Abt: "Moderately secretly", "very secretly".

The Court: The ones I have stricken, anyway.

The Witness: Conducted under circumstances which secluded the students and kept them entirely under a continuing training pressure, whether they were in the specific classes or in their spare time, or what not, in some cases and in some periods out in the country at one location,
162 or in some hall in the city—

Mr. Abt: If your Honor please—

The Witness: So that they were—

Mr. Abt: Again I object to the characterization. If the witness wants to describe what occurred—

The Court: That is correct.

Mr. Abt: —that is perfectly proper, but I think we should omit all these characterizations.

The Court: Correct. Adhere to the question.

The Witness: What I wish to say is that these schools consisted not merely of formal training sessions but of the entire time of the student during the time being directly

under forms of training pressure, which took such forms as discussion of their personality, preparation of all newspapers, further discussions than those in the specific curriculum basis.

I am mentioning this not to characterize, your Honor, but to describe a part of the activity which is equally important with the formal courses.

163 By Mr. O'Donnell:

Q. Did you attend any of these schools at which the defendant Lightfoot was present?

A. Over this period of time I organized and was responsible for a number of such schools. I distinctly remember that Mr. Lightfoot taught at one or more of them. I do not remember what time or place the specific one he taught at was. I distinctly remember him teaching, however.

Q. What was the purpose of these schools?

Mr. Abt: I object, your Honor.

The Court: He may answer.

Mr. Parsons: If he knows, your Honor.

The Court: He may answer.

By the Witness:

A. To develop and further harden and train leadership for the Communist Party.

By Mr. O'Donnell:

Q. At these schools were other than Communist Party members present?

A. No.

Q. What were the qualifications for instructors at these schools concerning which you have just been testifying?

164 Mr. Abt: I am sorry, Mr. O'Donnell, I didn't hear you.

By Mr. O'Donnell:

Q. What were the qualifications for instructors at these schools concerning which you have just been testifying?

A. The teachers at these schools were either leading Party functionaries or top level Communist leaders in the inner-Party educational field, members of the National Schools Commission, or responsible Party leaders who were specializing in teaching Marxism-Leninism within the district, or top functionaries of the Party, top leaders of the district.

Q. Did Mr. Lightfoot fit into either one of these two categories you have just described?

Mr. Abt: I object.

The Court: He may answer.

By the Witness:

A. Yes.

By Mr. O'Donnell:

Q. Into which one, if one, or both?

A. Into that of a top leading Party functionary of theoretical ability.

165 Q. When you say top leading functionary of theoretical ability, what do you mean by that?

A. I mean that on the one hand he was a leading member of the district cadre, that is, of the district leadership and recognized top leader of the district; and that, secondly, even in such a position he was one of the most capable people theoretically in the district.

Q. Now, in that position that you have just mentioned did he have responsibilities?

Mr. Abt: In what position?

The Witness: I am sorry.

Mr. O'Donnell: I will withdraw the question.

Q. You referred to the fact that he was in the top leadership. I believe you testified previously that he was a South Side-Chicago organizer?

A. Yes.

Q. And a member of the District Bureau, was it?

A. District Committee, and at a later point he became a member of the District Bureau, but I don't know exactly at what point.

Q. At that time what was the function of the District Bureau or the District Committee?

166 A. The District Committee and District Bureau which is the central core or executive, was responsible for all the work in the Illinois-Indiana District.

Q. Did that include the educational activities of the Communist Party?

A. The Bureau as such was responsible for all the work including the educational work.

167 Q. And as a member of the District Committee or the District Bureau, then, Claude Lightfoot was responsible, at least as a member, for all these activities?

A. Collectively so, yes.

Q. During this period concerning which you have just been testifying, in addition to the books that you have mentioned, were there any other publications by the Communist Party that were used in the educational program?

Mr. Abt: I wonder if you can give us some dates there, Mr. O'Donnell. I don't know what period you are talking about.

By Mr. O'Donnell:

Q. That is the period running during your membership.

A. Many books and certain journals, which were of a theoretical character.

Q. Take the journals first. What journals?

A. For theoretical and educational work, you are asking me?

Q. That is right.

A. As distinguished from things like The Daily Worker, which are from day to day, and of course
168 sometimes articles in The Daily Worker were used for educational purposes.

Q. What was The Daily Worker at that time?

A. The daily organ of the Communist Party.

Q. When you said daily organ, what do you mean?

A. It is a daily newspaper which represented the opinions of the Central Committee of the Communist Party, of the National Party, nationally.

Q. Was that distributed and sold in the Communist Party to the members, and so forth?

A. Yes, and probably as well for propoganda purposes, always for inner-Party clarification.

Q. And that was throughout your membership?

A. Yes.

Q. During the time that you were in charge of the Chicago Workers School did you use The Daily Worker as a source of policy in connection with your work?

A. Well, during that time as educational director of the district I was partially responsible for the department which circulated The Daily Worker, which comes generally speaking under educational work, as does literature.

Q. I should ask you this. I don't know if I have asked you. What was The Daily Worker, I mean,
169 where did it come from and what was its purpose?

A. A daily newspaper printed in New York, representing—for a long time it was officially the official organ

of the Central Committee or National Committee, whatever it was called at the time, of the Communist Party of the U. S. A., which contained the general position on political matters of the Communist Party from day to day. Associated with it at a period was first The Worker, then The Sunday Worker, which was a weekly edition.

170 Q. You mentioned The Daily Worker. Were there any other organs of this type?

A. Yes, "The Communist," which later became "Political Affairs," was the main theoretical organ, the monthly, which contained articles of the heavier kind, should we say, of all theoretical kinds or discussions at greater length of current problems and historical problems; and the semi-official organ of the Party, "The New Masses," and during part of this period "The Communist International," which was the organ of the Communist International, which was circulated by the American Party. During another part of that period, it changed its name and circulation for a year or so. I don't remember offhand the name it had at that time.

Q. Was the program of the Communist International disseminated in this district?

A. Yes. It was used particularly in inner-Party trade schools during this period.

Q. Now, you have previously referred to the Communist International, to the fact that the Communist Party of the United States was part of that over a period of time during your membership, and the fact that the Communist

171 Party of the United States withdrew from the Communist International. Do you recall the reason for the withdrawal of the Communist Party of the United States from the Communist International?

Mr. Abt: I object.

The Court: I did not get that whole question.

Mr. O'Donnell: I asked him if he knew the reason why the Communist Party of the United States withdrew from the Communist International.

The Court: Objection sustained.

By Mr. O'Donnell:

Q. Directing your attention to the year 1940, did any change take place in connection with any affiliation of the Communist Party, to your knowledge?

Mr. Abt: I object, your Honor.

Mr. O'Donnell: He can answer that yes or no.

The Court: The form of the question is bad—"change take place." What kind?

Mr. Abt: If your Honor please, it is all repetitious. The witness previously testified in 1940 the Communist Party disaffiliated with the Communist International.

172 The Court: If that is so, that is the same subject matter.

By Mr. O'Donnell:

Q. Was that fact discussed in the Communist Party of Illinois?

A. Yes.

Mr. Abt: Object.

The Court: That answer may stand.

173 By Mr. O'Donnell:

Q. Were you present at any discussion among the leadership of the Communist Party of Illinois at which defendant Lightfoot was present, at which this was discussed?

A. Certainly.

Q. I would like to show you what has been marked as Government Exhibit 26, and ask you if you can identify that?

A. Yes.

Q. What is it?

A. It is the program of the Communist International adopted at the Sixth World Congress in 1928.

Mr. Abt: What number is that?

Mr. O'Donnell: That is No. 26.

By Mr. O'Donnell:

Q. Was this used in Communist Party discussions?

A. Yes.

Mr. Abt: May we have a time, please, and who was there?

By Mr. O'Donnell:

Q. Do you recall the circumstances?

A. This was used in a great number of schools and classes covering a period from 1931 to 1942, in the
174 earlier period in all classes, public, private, secret, open; in the latter period, primarily in the inner-Party trade schools. I must have used it in teaching one hundred times.

Mr. O'Donnell: I will offer this at this time, your Honor.

Mr. Abt: Same objection with reference to Government Exhibit 22, and the additional objection that no connection has so far been established between this document and the defendant.

The Court: I will reserve my ruling on that.

By Mr. O'Donnell:

Q. During your membership in the Communist Party, that is, from 1934 on, did the Communist Party have a constitution?

A. Yes, sir, several.

Q. Directing your attention to the year 1938, do you know whether or not the constitution was published in that year?

A. The constitution was adopted, a new constitution was adopted at the International Conference in 1938, definitely. I was present there. I was present when it was adopted.

175 Q. Was that printed and disseminated?

A. Yes.

Q. Was it used or made available to the Communist Party members in the Illinois District?

A. Yes.

Q. I show you what has been marked as Government Exhibit 30, and ask you if you can identify that?

A. That is the constitution that was adopted in 1938.

Q. And this was widely used and disseminated in the Communist Party of Illinois at that time?

A. Yes.

Mr. Abt: Are you offering it?

Mr. O'Donnell: Yes, sir.

Mr. Abt: I object to it, your Honor, on the ground it is too remote, and on the further ground that no relevancy has been established at this point for its introduction.

The Court: What is the relevancy?

Mr. O'Donnell: It is the constitution of the Communist Party, and I would just like to show you the preamble
176 of the constitution, starting at the bottom of page 5.

The Court: I will reserve my ruling as to the book itself, whatever the exhibit is. Move along a little faster, Mr. O'Donnell.

By Mr. O'Donnell:

Q. In connection with the newspapers you referred to a few minutes ago, was there any other publication of the

Communist Party that was disseminated in the Illinois District?

A. I mentioned "The Communist," and "The New Masses," I believe "The Communist," later "Political Affairs."

Q. What was "The Communist"?

A. The general theoretical organ of the Communist Party.

Q. Was that disseminated and circulated in the Communist Party?

A. Within the Party, for study and discussion.

Q. Was its use recommended for that purpose?

A. Very definitely.

Q. By the leadership of the Communist Party in Illinois?

A. Yes, and enforced.

177 Q. Showing you what has been marked as Government Exhibit No. 31, and this is a volume containing a number of periodicals, at this time I will ask you if you can identify the first issue.

A. The January 1940 issue of "The Communist," with Earl Browder's name as editor.

Q. Was that edition circulated?

A. Yes, it was used in inner-Party training and discussion primarily.

Q. Was the circulation of this book under the general supervision and control of the District Bureau of the Communist Party at that time?

A. Yes, specifically through the Literature Department, which in turn was under the Educational Department, and in collaboration with the efforts of both of those departments, the Educational Department in terms of discussion and circulation, and the Literature Department in terms of circulation.

Q. I think you testified during that time the defendant Lightfoot was on the District Committee?

A. Yes.

Mr. O'Donnell: I would like to offer at this time "The Communist" of January 1940, with particular refer-

178 ence to an article which appears on page 73, "On The Distribution and Study of the History of the C. P. S. U. (b), and the Propagation of Marxist-Leninism in the World Communist Movement."

Mr. Abt: That is objected to, your Honor.

The Court: The same ruling.

Mr. O'Donnell: Your Honor, I would like to make an offer as regards this, according to his testimony.

Mr. Abt: If you are going to make an offer, it should be outside the presence of the jury.

The Court: Yes. I will reserve my ruling.

By Mr. O'Donnell:

Q. I will show you what has been marked as Government Exhibit 24, and ask you if you can identify that.

A. Yes.

Q. What is it?

A. "Imperialism," by Lenin.

Q. During the time that you were in the Illinois District of the Communist Party, was this used in Communist Party schools?

A. Yes.

Q. Did you ever discuss this particular book with
179 the defendant Lightfoot?

A. Yes.

Q. Did he ever use it in the course of his instruction in the school?

A. On the same basis as before, yes.

180 Q. I will show you what has been marked Government Exhibit 27 for identification, and ask you if you can identify that?

A. Yes.

Q. What is it?

A. It is a series of excerpts of Lenin, Marx, Stalin and others, brought together in a simple book, and called "Strategy and Tactics," a collection of isolated statements.

Q. Was this book used in the educational program of the Communist Party in Illinois during the period that we have been discussing?

A. During the early part of that period, and during the latter part of the inner-Party schools and nationally.

Q. Did you ever discuss this book with Mr. Lightfoot?

A. I could not be sure.

Q. Do you know whether you ever used it in the Communist Party?

A. I could not be sure, because it is a series of excerpts that was circulated at a given time.

Q. I show you Government Exhibit No. 28, and at the

same time I show you Government Exhibit 29, and
181 ask you if you can identify these two books?

A. These two are of the same series, excerpts on other questions, one called "The Dictatorship of the Proletariat," and the other, "The Theory of the Proletariat Revolution," covering the same period and used in the same way.

Q. Were they used in the Communist Party in Illinois?

A. During the early part of the period, and during the latter part in inner-Party schools.

Q. Did you ever discuss these books with defendant Lightfoot?

A. I don't believe these books specifically.

Q. Do you know whether or not they are used in Communist schools?

A. Definitely used in inner-Party schools throughout the period.

Q. Do you know whether defendant Lightfoot actually taught from them himself?

A. I could not say.

182 Mr. O'Donnell: I will offer Government Exhibits 27, 24, 22, "Strategy and Tactics," and No. 24 is "Imperialism."

Mr. Abt: We make the same objection.

The Court: I will reserve my ruling.

Mr. Abt: I would like to make an additional objection with reference to Government Exhibit 27. The witness says he does not know whether he ever discussed it with the defendant or whether the defendant ever used it.

The Court: That is correct, if I recall the testimony.

Mr. Abt: On that basis I think the exhibit should be excluded at this time.

The Court: All right. I think I will rule on that. Objection sustained.

By Mr. O'Donnell:

Q. Now, Mr. Meyer, during the time that you were in the Illinois District of the Communist Party, did you have any other appointment?

A. In the earlier period I was a graduate student; in the latter period, I was a functionary of the Party that was employed, or of the Workers School.

Q. What is a functionary?

183 A. It means a paid officer.

Q. Do you know whether or not the defendant Lightfoot was a paid officer?

A. During a great part of the period, certainly, if not all of it. I think all of it.

Mr. Abt: I am sorry, I did not get the last part of the answer.

The Witness: I think all of it.

By Mr. O'Donnell:

Q. Do you know whether or not during the period that you knew Mr. Lightfoot, he had any other employment other than that with the Communist Party?

A. I do not know of any other.

Q. You don't know of any other?

A. No. Perhaps I should qualify that answer for a moment. As far as I know, through the entire period Claude Lightfoot was a full time worker of the Party or some organization under the lead and organized by the Party. I do not specifically know that he was on the Communist Party actual payroll during all the time, but during the time I knew him, he was functioning as a full time Party person, or was paid directly by the Party, or by some other organization of the Party.

184 Q. Now, you mentioned yourself that in 1942 you left Chicago, is that correct?

A. Yes.

Q. Now, what did you do after leaving Chicago?

A. I entered the Army as a volunteer officer candidate in the autumn of 1942, October, 1942.

Q. How long did you remain in the Service?

A. About seven or eight months.

Q. And you left the Service?

A. I was a volunteer officer candidate, and because of bad feet I failed to make the grade for an officer's commission, and was discharged under the voluntary officer candidate scheme, and following that in the next two years I was occupied in having two operations on my feet, which kept me pretty well out of circulation.

Q. Now, after you came out of the Army, did you do anything in connection with your Communist Party activities?

A. Well, during the first year and a half to two years, I was either in a wheel chair, or limping about. I was pretty well isolated, living in the country. I did some writing

principally in the latter part of that, and during, I
185 I would say, after the summer of 1944, by which time the Party had been transformed into the Communist Political Association, I taught in the Jefferson School in New York, I did a certain amount of inner-Party writing and discussion around New York, and I wrote for "The New Masses," and wrote articles for inner-Party circulation.

Q. Directing your attention to the year 1944, to your knowledge did anything take place in the Communist Party of the United States?

Mr. Abt: That calls for a yes or no answer.

The Court: Yes or no.

The Witness: Yes.

By Mr. O'Donnell:

Q. What took place?

Mr. Abt: I object.

The Court: It is very difficult to know what he means. I will have to find out first. He may answer.

Mr. Abt: I would like to point out this, that the witness previously testified that he had not seen the defendant Lightfoot since 1942. We are now in a 1944 period. So, whatever he says cannot connect with Mr. Lightfoot, because he has not seen him since 1942.

186 The Court: He may answer what change is made in the Communist Party.

Mr. O'Donnell: This is general.

A. The Communist Party was dissolved and transformed into the Communist Political Association at a convention in New York in the late spring or early summer of 1944.

By Mr. O'Donnell:

Q. Were you active at any time during the Communist Political Association period?

A. Not in a direct organinational sense as in Chicago, but as writer, teacher, and in general touch with the national office of the Party. I was a member-at-large, functioning out of the general office.

Q. To your knowledge, did the Communist Party of Illinois become a member of the Communist Political Association?

Mr. Abt: I object to that, your Honor.

The Court: He may answer.

A. The Illinois-Indiana District of the Communist Party, became, one or two, an Illinois and Indiana State organization of the Political Communist Organization, transformed themselves locally as well as nation-
187 ally.

The Court: How much longer do you think you will take with this witness?

Mr. O'Donnell: Possibly half an hour, Your Honor.

The Court: The jury will remember your instructions. Mr. Marshal, adjourn until 10:00 o'clock tomorrow morning.

(Thereupon an adjournment was taken until 10:00 o'clock A. M. of the following day, Thursday, January 13, 1955.)

188 IN THE UNITED STATES DISTRICT COURT.

(Caption—54-Cr.-262)

Before Hon. Philip L. Sullivan, Judge, and a Jury.

Thursday, January 13, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Appearances:

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, By: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Esq., Special Assistant to the Attorney General, on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

189 The Court: You may proceed.

FRANK S. MEYER, a witness on the part of the Government, being previously duly sworn, resumed the stand and was examined and testified further as follows:

Direct Examination (Resumed) by Mr. O'Donnell.

Q. Mr. Meyer, directing your attention to the time that you were preparing the educational program of the Chicago Workers School, did you meet with the instructors?

A. Yes, sir.

Q. Where were these meetings held?

A. Usually in my office in the school.

Q. And where was your office during that period?

A. The school during the entire period we are speaking of moved, but in most of the period, the earlier part it was on Dearborn Street south of the Loop, and a little later, I would say around 1930 or 1940, we moved to the corner—an office building at the corner of Wells and, I believe, Jackson, two hundred and something Wells.

Q. Was that in Chicago?

A. Yes, in Chicago.

190 Q. Here in Illinois?

A. Yes.

Q. At what time of the day would these meetings take place?

A. Well, that would depend upon the teacher. If he was a person who was a full-time Party functionary, very often in the daytime. If it was a person who worked during the day and taught in the school in the evening, it would be in the evening or late afternoon, something of that sort.

Q. Did you have particular meetings with the instructors about the particular subjects they were to instruct or were instructing?

A. Yes, sometimes in a group of two or three, if they were instructing in the same thing, I would get them together; sometimes in individual groups.

Q. Did you have meetings with Claude Lightfoot about the courses he was teaching?

A. Yes.

Q. Just what courses was he teaching in that school, in the Chicago Workers School?

A. I know he taught Marxism-Leninism, he taught the History of the C. P. S. U., I believe he taught Political

Economy. I am not absolutely certain of that. He
191 taught a number of special courses on national questions, the Negro question. I think that would roughly cover it.

Q. You refer to The History of the C. P. S. U. Does that have a more full title?

A. The History of the Communist Party of the Soviet Union.

Q. Did you have many meetings with Lightfoot concerning the courses he was teaching?

Mr. Abt: I object, your Honor, to the form of the question.

The Court: I beg your pardon?

Mr. Abt: I object to the form of the question.

The Court: Read the question.

(The last question was read by the reporter.)

The Court: He may answer.

By the Witness:

A. I would say the average number.

By Mr. O'Donnell:

Q. At any particular period during the time that he was teaching at the school, did you have more meetings than any other time?

192 A. I think that the period at which I held the most meetings with him and with other instructors was around late—I would say early 1940.

Q. And why was that?

A. We were reconstructing or completely transforming the character or the form of the teaching of the more advanced political courses, which had previously been known as Marxism-Leninism, and with the publication of the "Short Course of the History of the Communist Party of the Soviet Union", were transforming the mode of approach, the way to handle these Marxist-Leninist courses, changing the title of the courses and fitting them around this new book, this new textbook.

Q. How long would these meetings last with Mr. Lightfoot?

A. I imagine discussions that I had at that time about curriculum might be an hour, an hour and a half.

Q. Did you discuss this new book, "The History of the C. P. S. U.", with him?

A. Yes.

Q. Did he discuss the book with you?

A. Yes.

193 Q. Did you discuss any of the other texts that were being used in the class at that time?

A. Yes, because one of the problems was how to set into the new curriculum the new form of the courses, the same classics that were used before, and to fit them into the master plan for the courses based on the new textbook, so there had to be discussions in connection with that.

194 Q. Did he discuss any of the texts with you?

A. Certainly.

Q. What was the object of this series of meetings in your office here in Chicago that you had with Lightfoot at this particular time?

Mr. Abt: Object, your Honor.

The Court: He may answer.

By the Witness:

A. To see to it, with Lightfoot as well as the others, that the course was taught in a uniform manner, that it carried out the line of the Party, on teaching in the new situation with the new text book, that it carried through directives that came from above and which had been worked out a great deal locally, that altogether the teaching of the school was uniform and, from the Communist point of view, correct.

By Mr. O'Donnell:

Q. And what was the result of your discussions with Mr. Lightfoot?

A. Agreement.

Q. When you say agrement, what do you mean by that?

A. I mean we agreed upon what should be taught

195 and how it should be taught.

Q. I show you Government's Exhibit 22 and ask you if this is a copy of one of the boks that you discussed.

A. That is the "Short Course in the History of the Communist Party of the Soviet Union."

The Court: What is that exhibit number?

Mr. O'Donnell: No. 22, your Honor.

By Mr. O'Donnell:

Q. I will show you what has been marked as Government's Exhibit No. 19, and ask you if this was one of the books that was discussed at that time.

A. Yes.
The Court: With whom?
The Witness: With Mr. Lightfoot.

By Mr. O'Donnell:

Q. We are talking about the same time.
And I will show you Government's Exhibit No. 21, and ask you if this is one of the books you discussed with Mr. Lightfoot?
A. Yes.
Q. And I will show you Government's Exhibit No. 23, and ask you if this is one of the books you discussed with Mr. Lightfoot?
196 A. Yes.
Q. I will show you Government's Exhibit No. 25, and ask you if this is one of the books that you discussed with Mr. Lightfoot?
A. Yes.
Q. I will show you Government's Exhibit No. 18, and ask you if this is one of the books that you discussed with Mr. Lightfoot at that time?
A. Yes.
Q. I will show you what has been marked as Government's Exhibit No. 40, and ask you if you can identify that.
A. Yes.
Q. And what is it?
A. It is "A Letter to American Workers" by Lenin.
Q. That is Exhibit No. 41 for identification. Was this one of the books you discussed with Mr. Lightfoot at that time?
A. Yes.
Mr. Abt: That is No. 40?
Mr. O'Donnell: 40, that is correct.

By Mr. O'Donnell:

Q. I will show you what has been marked as Government's Exhibit No. 41, and ask you if you can identify
197 that?
A. Yes.
Q. And what is it?
A. "What is to be done" by Lenin.
Q. Was this one of the books you discussed with Mr. Lightfoot at that time?
A. Yes.

Q. Mr. Meyer, directing your attention to Government's Exhibit No. 22, "History of the C. P. S. U.", would you recognize one of the pages that you discussed with Mr. Lightfoot?

A. Yes.

Q. I will show you the exhibit and direct your attention to page 2, and ask you if that was one of the pages you discussed with him at this time.

A. Yes.

Q. I will ask you to examine that book and turn to page 9, and ask you if that was one of the pages you discussed with him.

A. Yes.

Q. Would you turn to pages 32 through 34? I will ask you if you discussed those pages with Mr. Lightfoot at that time?

A. Yes.

198 By Mr. O'Donnell:

Q. If you will turn to pages 70 to 72.

A. Yes.

Q. I will ask you the same question. And is your answer yes?

A. Yes.

Q. I will ask you to turn to page 81 and ask you if you discussed that with Mr. Lightfoot at that time?

A. Yes.

Q. I will ask you to turn to page 111 and ask you if you discussed that with Mr. Lightfoot at that time?

A. Very definitely, yes.

Q. Pages 133 to 134?

A. Yes.

Q. I will ask you to turn to page 149.

A. Yes.

Q. I will ask you to turn to page 150, and will ask you if you discussed that case with Mr. Lightfoot?

A. It is a continuation of the passage on 149, the same passage.

Q. Page 150—page 151?

A. This is a continuing discussion, 149, 150 and 151.

A. You discussed that with Mr. Lightfoot?

A. Yes.

199 Q. Turn to page 159.

A. Yes.

Q. You discussed that with Mr. Lightfoot?

A. Yes.

Q. I will ask you to turn to page 167 and page 168 and ask you if you discussed those pages with Mr. Lightfoot?

A. Yes.

Q. I will ask you to turn to page 170 and ask you if you discussed that page with Mr. Lightfoot?

A. Yes.

Q. Now I will refer you to page 171 and ask you if you discussed the material on that page with Mr. Lightfoot?

A. A continuing passage from 170.

Mr. Abt: Judge, I think we can speed up this process.

The Court: I beg your pardon?

Mr. Abt: I think we can speed up this process.

The Court: All right.

Mr. Abt: If Mr. O'Donnell will give the page numbers that he intends to ask about and to refer to here we
200 will stipulate that or we will agree that they were discussed with Mr. Lightfoot.

Mr. Parsons: Will counsel also make the same stipulation with reference to the other books?

Mr. Abt: You will have to take that up with the other books. Let's solve one problem at a time.

Mr. O'Donnell: Do you wat to read the pages into the record?

Mr. Abt: Just read the pages into the record.

Mr. O'Donnell: 180, 183, 188, 192, 195, 198, 204 through 205, 208, 223, 224, 231, 267, 274, 275, 353 through 363.

Mr. Abt: 353 through 363?

Mr. O'Donnell: That's right.

May the record show these pages have been stipulated to, your Honor?

The Court: All right.

Mr. Abt: In the sense that the record also shows we have stipulated. I don't know what the pages have been stipulated.

Mr. O'Donnell: At this time I would like to offer
201 this exhibit, Government's Exhibit No. 22, in evidence as to the pages the witness has stated he discussed with Mr. Lightfoot.

Mr. Abt: I have the same objection, your Honor, that I interposed yesterday, and I don't think it has been cured by the process that has been gone through this morning.

The Court: I will reserve my ruling on that also, all of them.

By Mr. O'Donnell:

Q. Now, Mr. Meyer, directing your attention to Government's Exhibit 19, would you recognize the passages or one of the passages in this book you discussed with the defendant, Mr. Lightfoot?

A. What is Government's Exhibit 19?

Q. Oh, excuse me. Foundation for Leninism.

A. Well, I think I would recognize the passages if I were able to perhaps see one of the outlines such as the one I saw yesterday.

It is impossible to remember now without a little recollection just which passages from that book were discussed in connection with specific things, specific passages.

202 I know definitely we used the book, and discussed passages, but these exact passages I don't think I could swear to now without some form of recollection such as the outline such as I saw yesterday.

203 Q. I will show you Government's Exhibit 38 and ask you if this is the outline to which you are referring?

A. Yes, the outline used in the school.

Q. Why would that refresh your recollection?

A. Because the method of organizing these courses was that the text books such as "Foundation for Leninism" which you just mentioned, and a number of others which have been previously mentioned, were used either entirely or very large sections of them were used, and others used only partially on the basis of previous consideration as to the teaching to supplement and add to the type material in the book. After fifteen years I wouldn't be able to swear that I discussed passages X to Y with him without having my memory refreshed by the outline which I could see or use at this time. It was easier with the other book because the whole book was used in that, and in detail, and was discussed in great detail, particularly certain theoretical passages.

Q. You refer to the fact that the classics were limited to particular passages for instruction?

204 A. I mean in connection with using the "History of the Communist Party of the Soviet Union" as a text book. I mean in the Workers School only certain sections of the pamphlet sections that you had there were

used with the C. P. S. U. Mr. Lightfoot was of course familiar with the whole book, but you have asked me whether I discussed them in connection with the particular class or particular passage, and there I would have to be able to refresh my recollection by the outlines used at that time.

Q. Would you examine this book and this document and see if it does refresh your recollection?

A. For example, I note here that the second section recommends the use of the Communist Manifesto, and the whole thing is that in discussing that second section such as is here in connection with the "History of the Communist Party in the Soviet Union". I would have discussed the whole manifesto with Mr. Lightfoot, and therefore—

The Court: Not what you would, but did you.

By the Witness:

A. Yes, I did.

205 Mr. Abt: If the Court please, it seems to me it is apparent from the witness' own statement that the process he is now going through is not a process of refreshing his recollection at all, but the witness is very honest about it, I think. He says that because a reference appears in that outline to a particular book then that book was discussed by the teacher or was to be discussed by the teacher in connection with the course, and he reaches the logical deduction from that he must have discussed that particular passage with Mr. Lightfoot.

That is the process we have here, I think.

The Court: Ask him if he did discuss it.

Objection overruled.

Mr. O'Donnell: I would like to offer this exhibit at this time, your Honor, on the basis the witness has testified it refreshes his recollection as to the discussions he had with the defendant Lightfoot with regard to these books.

The Court: There will be the same ruling.

206 By Mr. O'Donnell:

Q. Do you recall at this time the particular pages that you discussed with him in the other classics?

A. Without referring to the outline, no. With reference to the outline, I know I did discuss with him some passages, and I remember the content of many sections in the classics, but I can't remember the page numbers.

I might be able to do that if I looked through them a

long period of time, certain books. I know what subjects were discussed and where they are in the classics, but I do not know the numbers without referring to that.

Q. I will show you this exhibit for the purpose of refreshing your recollection—

Mr. Abt: What number is this?

Mr. O'Donnell: This is Government's Exhibit 38.

By Mr. O'Donnell:

Q. (Continuing.) —and I will ask you if it refreshes your recollection as to what was recommended or what you discussed with Mr. Lightfoot with reference to Gov-
207 ernment's Exhibit 19, "Foundation of Leninism"?

A. This will take a little time.

Q. You can answer that yes or no, as to whether or not it refreshes your recollection.

A. Just a moment. It is rather a long list to read. "Foundation of Leninism."

Q. Just a minute.

Now, having refreshed your recollection do you recall after having refreshed your recollection what were the pages that you discussed with him?

A. It would appear, as I had thought, that on the Foundation as on the Communist Manifesto we used, and therefore I discussed the whole of it.

Q. Do you recall, referring you to Government's Exhibit 21, which is "Problems of Leninism," do you recall at this time what pages you discussed with Mr. Lightfoot?

A. No.

208 Q. I will show you Government's Exhibit 38, and would you see if that will refresh your recollection.

A. Here also the reference is to the whole of it.

Q. Just answer whether it refreshes your recollection.

A. Yes, it does.

Q. Does it refresh your recollection as to the pages that you discussed with Mr. Lightfoot at that time?

A. The reference there being to the whole of the book, I know I did not discuss the whole of the book, but I know from looking through the outline I referred to sections, but I would have to look at the outline to know the sections involved.

Q. I will show you Government's Exhibit 21 for identification, which is "Problems of Leninism", and ask you to examine that book and see if that refreshes your recollection as to what pages you discussed with Mr. Lightfoot.

A. Chapter 1, which is pages 7 to 9.

Q. Did you discuss these pages?

209 A. Yes, Chapter 1, which is pages 7 to 9, definitely.

The Court: Again, do you have the pages that you expect to ask him about?

Mr. O'Donnell: We have the pages, yes, your Honor.

The Court: Out of this book?

Mr. O'Donnell: Yes, your Honor.

The Court: Can there be any stipulation about that?

Mr. Abt: I think there could, your Honor, except I gathered here the process was going on in a different way. I certainly don't want to waste time here, your Honor. It is rather a strange proceeding.

The Court: I take it he is asking him whether or not he discussed certain passages.

Mr. Abt: He is not at this point.

Mr. O'Donnell: Yes.

Mr. Abt: He is asking the witness to say what pages.

The Court: I think you had better ask him directly.

210 By Mr. O'Donnell:

Q. Did you discuss pages with Mr. Lightfoot?

A. Yes.

Q. Will you state the pages you discussed?

A. I am trying to find them.

Q. To find them?

A. If you want to ask—

The Court: Do you have what you expect to offer?

Mr. O'Donnell: Yes, we have what we expect to offer.

The Witness: If you want to ask me which of the pages.

Mr. Abt: I am sorry, your Honor. Is there something pending?

The Court: He says he expects to ask him if he discussed certain pages.

Are you willing to stipulate that he did read certain pages or did discuss them?

Mr. Abt: Not at this point, your Honor.

The Court: All right, go ahead.

By the Witness:

A. (Continuing.) Pages 7 to 9, which is the first

211 chapter.

The second chapter, which are pages 10 to 12.

The fourth chapter, pages 16 to 28 and pages 44 through 45. Page 66.

I think those are the main sections.

212 Mr. Abt: May I see the exhibit a moment, Mr. O'Donnell?

(Mr. O'Donnell handed the exhibit to Mr. Abt.)

Mr. Abt: I just want to call your attention, your Honor, to the fact that at least in many cases the pages which Mr. Meyer—

The Court: I don't hear you, Mr. Abt.

Mr. Abt: I simply want to call your Honor's attention to the fact that very briefly looking through this volume, "Problems of Leninism", that has been in the witness' hands, that at least many of the pages which he called out have already been marked off in this book.

The Witness: Your Honor, may I say there are also marked pages in there that I did not read off.

Mr. Abt: That is right.

The Witness: And there is no differentiation between the markings.

Mr. Abt: I don't quite understand, your Honor, what we are going through here, very frankly.

The Court: I don't understand your objection, if
213 you have one.

Mr. Abt: The book was given to the witness presumably for the purpose of refreshing his recollection, and I simply want to call your Honor's attention to the fact that many pages in this book to which the witness referred are pages which had already been marked off in the book.

The Court: Is that the reason that you recollect it?

The Witness: No, sir.

The Court: All right.

The Witness: Because there are many pages equally marked that I did not mention.

The Court: All right.

The Witness: And some unmarked pages that I did mention.

The Court: Proceed.

By Mr. O'Donnell:

Q. Directing your attention now to Government's Exhibit No. 41, which is "What Is To Be Done", do you recall at this time the pages that you discussed with Mr. Lightfoot in this book?

A. Not without consultation with the book and
214 outline.

Mr. Abt: Let me ask you this, Mr. O'Donnell. Let us see if we can't speed things up. Do you have a list there of the pages that you want him to identify?

Mr. O'Donnell: Yes.

Mr. Abt: Why don't you show him the list and the outline and then let him say what he discussed, whether or not he discussed those pages, as a group, with Mr. Lightfoot, and if he didn't discuss any particular pages that you have on your list, let him say that. Let us get throught with this.

By Mr. O'Donnell:

Q. I will hand you what is marked Government's Exhibit No. 41, "What Is To Be Done", and ask you to look at page 8 in that book.

Mr. Abt: That is not my suggestion.

Mr. O'Donnell: What is it?

Mr. Abt: You have now in your hand a card—

Mr. O'Donnell: That is right.

Mr. Abt: With some pages, page numbers on there, right?

Mr. O'Donnell: Yes.

215 Mr. Abt: I would suggest you show Mr. Meyer the card and let him tell you whether or not he discussed with Mr. Lightfoot—

Mr. O'Donnell: Perfectly agreeable.

Mr. Abt: —the page numbers that are indicated on that card.

Mr. O'Donnell: Perfectly agreeable.

Mr. Abt: If he has, he can read them out.

The Witness: I will have to check each page.

The Court: All right.

The Witness: Page 8, yes.

The Court: Well, Mr. Meyer, say the ones that you did discuss.

The Witness: Good.

The Court: Those that you did not discuss, also say that.

The Witness: Good.

Page 105, going over onto 106, yes.

Page 157, yes. It is really page 157 and '8; it is a continuing passage; yes.

Page 163, yes.

I just want to say that there are more parts than the ones mentioned here that I might have discussed at
216 that time, or did discuss. I am sure of it.

By Mr. O'Donnell:

Q. I show you Government's Exhibit No. 23, "State and Revolution."

A. Pages 9 and 10, yes. 19 and 20, yes. 23, yes.

The Court: Mr. O'Donnell, hereafter I wish that if you have a witness that you expect to identify pages or such, that previously to getting him on the stand you show him the book and show him the pages on that, so that he will know when you talk to him whether or not he discussed them, without taking the time to go through them here. Do you understand?

Mr. O'Donnell: Yes, your Honor.

The Witness: 33 and 34, yes. 52 and 53, yes.

217 By Mr. O'Donnell:

Q. I will show you what has been marked Government's Exhibit No. 25, "Left-Wing Communism; An Infantile Disorder," and ask you to use the same procedure with reference to that.

Mr. Abt: What, Mr. O'Donnell?

Mr. O'Donnell: "Left-Wing Communism".

The Witness: "Left-Wing Communism; An Infantile Disorder."

Mr. Abt: What number?

Mr. O'Donnell: 25.

By the Witness:

A. Page 7, yes. Page 12, yes. 16, 29, 38, 59, 66 and over to page 67, yes. 70, yes. 74-5, yes. 80, yes.

The last is impossible, because there are 95 pages in the book and the card asks as to 95 to 124. In fact, I don't think page 95 was discussed, actually.

By Mr. O'Donnell:

Q. I will show you Government's Exhibit No. 40, which is "A Letter to the American Workers", and ask you to refer to those pages.

A. Page 6, yes. 16, yes, and continuing over the
218 page to 17.

Q. I will ask you as to just one more, and that is Government's Exhibit No. 18, "The Communist Manifesto", as to the pages listed.

A. I have already testified that I discussed the whole of this, and I will just check the two pages, if you wish. Very definitely.

Mr. Abt: If your Honor please, the witness has said he discussed the whole book. I don't know why we have to go into pages.

The Court: That is right.

By Mr. O'Donnell:

Q. He discussed these pages we have been discussing, with you?

A. Yes.

Q. As a result of these series of discussions, do you have an opinion as to whether or not this program, that is, for the teaching of the History of the Communist Party, Soviet Union, was going to be carried out?

Mr. Abt: I object, your Honor, did he have any opinion as to whether something was going to happen in the
219 future. I don't know the purpose of the question, but it certainly is inadmissible.

The Court: What is the object of it?

Mr. Parsons: The purpose of the question is to ask the witness what his impression was as the result of these series of conferences on this program—

The Court: A little louder, Mr. Parsons.

Mr. Parsons: As a state of facts that existed in his mind at that time, not calling for opinion evidence.

Mr. Abt: What has Mr. Meyer's impression got to do with this case?

The Court: What is in his mind wouldn't have any bearing.

Mr. Parsons: There was a discussion, your Honor, between the defendant and the witness over a series of days concerning the readaptation of certain literature to the courses that were being taught, and the purposes of that discussion were to perfect this teaching program. He has stated that there was an agreement, and under-
220 standing between them, that this program would be carried out.

The Court: That is right.

Mr. Parsons: The question merely is—

The Court: He has testified to that. As to any impression that the conclusion that was stated by the defendant, that is another matter, not by this witness. Sustained.

Mr. Parsons: May it please the Court, we would like to make an offer or tender of these exhibits into evidence again, in one aspect only. There is an element in which these exhibits would be material, and incidentally we would like to be heard on the tender, if we may.

The Court: I didn't hear that last, Mr. Parsons.

Mr. Parsons: We would like to be heard on the tender, if we may.

The Court: Are those the exhibits you offered yesterday and I reserved my ruling on?

221 Mr. Parsons: Yes, we offered them in their entirety yesterday. We want to offer them as to these certain pages, and offer them only for the purpose of showing knowledge. We are not offering these at this time to show the aims and objectives of the Communist Party of the United States. I understand your Honor's reservation on this issue is dual. It is about offering the entire exhibit. We agree with you that the jury should not be required to take a thick book like this back to the jury room.

The Court: I have certain matters in mind about my ruling on that. However, have you other examination of this witness?

Mr. O'Donnell: Yes.

The Court: I suggest you go forward, if you can, with that, and then I will rule on that after you have finished your direct examination.

Mr. Parsons: Thank you.

The Court: And let me suggest that you accelerate the examination.

Mr. O'Donnell: Yes, your Honor.

222 The Court: Proceed.

By Mr. O'Donnell:

Q. Now, Mr. Meyer, your relationship with Claude Lightfoot was over how long a period of time?

A. About eight years, I would say.

Q. And how would you describe your relationship with Mr. Lightfoot over this period?

Mr. Abt: I object, your Honor.

The Court: I didn't get the full import of the question.

(The last question was read by the reporter.)

The Court: He may answer that.

By the Witness:

A. We worked very closely together during a considerable part of the period, and on a reasonably close basis in other parts of the period. That is in the first case when we both were on the District Bureau of the Young Communist League, and in the second part of the period when we were both on the Section Committee of the Communist Party on the South Side. During that period I saw a great deal of him and worked very closely with him. In other periods, a considerable amount,
223 but not on such a direct basis.

By Mr. O'Donnell:

Q. When was that that you worked with him on the South Side?

A. From I would say covering the years of perhaps late 1935, I would say, probably late 1935, certainly 1936 and into 1937. During part of that period Mr. Lightfoot was away, and I can't exactly place which part of the period he was away. So if I would say from late 1935 to late 1937, it about covers it, with the exception of the time he was away.

Q. Do you know where he was when he was away?

Mr. Abt: We had that all yesterday, your Honor.

The Court: Sustained.

By Mr. O'Donnell:

Q. In this period when you were working with him on the South Side, were you working with him on anything in particular?

A. Well, we worked together on the Section Committee on all the activities of the South Side Section. There was also, in addition to direct day-to-day Party work, there was a good deal of discussion at that time and work upon theoretical matters having to do with the Negro
224 question, as the Party calls it, with him and with the Section organiser, Harry Hayward, who was then also a member of the political bureau of the National Leadership Department.

Q. How did you go about working with Lightfoot and Hayward?

A. The major thing I remember coming out of these discussions on such questions was the project of a pamphlet which Harry Hayward was writing, and on which both Mr. Lightfoot and I collaborated with him on prob-

lems of the Party's attitude and policy and theory on the question of Negroes in the United States.

225 Q. When you say collaborated, what do you mean by collaborating?

A. Well, Harry Hayward as a ranking member was writing the pamphlet, and it was his pamphlet and under his name; we all discussed it together, and I did a good deal of the actual writing.

Q. Where did you meet?

The Court: What if anything did the defendant Lightfoot do?

The Witness: He participated in discussions of the problems as we went along, thrashing them out.

Was there a question pending?

By Mr. O'Donnell:

Q. Without giving specific conversations, what were some of the discussions about?

A. About the Party's policy for self-determination of the Black Belt in the South; about the methods of making this palatable; about the relationship between the struggles of the Negro people and the program of the Communist Party; about what the Communists called Negro Nationalism; such things, and theoretical questions associated with problems of this kind.

Q. Just what do you mean by Negro Nationalism?

226 Mr. Abt: Just a moment. I object to the form of the question, your Honor. What he means by Negro Nationalism is certainly irrelevant.

The Court: What is that?

Mr. Abt: I object to the form of the question. What the witness means by Negro Nationalism certainly has no relevance here.

Mr. Parsons: It is part of his testimony.

The Court: He may answer what he means by it.

The Witness: To explain that phrase I have to say a word or two about Communist theory on such questions. From the time—

Mr. Abt: Object to that, your Honor.

The Court: Yes, sustained.

The Witness: About how I understood Communist theory?

By Mr. O'Donnell:

Q. No. What do you mean by the expression Negro Nationalism?

A. I can't explain it without putting before that one or two preliminary theoretical considerations without which it has no meaning. That is my problem.

227 Q. I will ask you this. Was this concept of Negro Nationalism, was that tied in with the teachings of the Communist Party at that time?

A. Oh, yes, very definitely.

Q. Well, in that connection, just in simple terms, as simply as you can explain it—

A. All right.

Mr. Abt: Your Honor, I am confused as to what the question is. Is the question, what does this witness mean by the term Negro Nationalism?

Mr. O'Donnell: That is right, in the simplest terms he can give it.

The Court: He may answer it.

The Witness: It is what I meant as a Communist, not what I mean today. I want to make that very clear.

Since all so-called national questions, that is to say, the anti-imperialist struggles of people in Asia and Africa and South America are, from the Communist point of view, regarded as simply an auxiliary ally of and secondary to the proletariat revolution—

228 Mr. Abt: May it please the Court—

Mr. Parsons: May it please the Court, will counsel cease interrupting the witness until the witness finishes the answer? Then he can move to strike it out.

The Court: He has a right to make his objection.

Mr. Abt: If your Honor please, the question was, what does Negro Nationalism mean to this witness. Instead of limiting himself to that question, the witness is now testifying, apparently as an expert or in some fashion, as to what Communist Party theory or ideology was on a whole series of questions here, I submit it is quite improper.

Mr. Parsons: I submit, your Honor, I too listened to the witness, and I am convinced the witness was telling us what he means.

The Court: I think so. He may proceed.

229 By the Witness:

A. Since, as I was saying, all aggression of forward-moving movements of peoples who have been oppressed by more advanced ones are regarded by the Communists as simply forces to be used as a support for the victory of the proletarian revolution, and since the Communist Interna-

tional had in that period decided that the Negro people within the United States were identically equal to a colonial people in some outside colonies, such as that of Asia or Africa, or something of that sort, they had therefore put forward the position that the socialist revolution in the United States could best be assisted from the point of view of using the Negro people to assist it, by a program of national liberation and separation from the United States of the so-called Black Belt in the South.

Negro Nationalism means those who supported this program or any other program for the benefit of the Negro people without subordinating it completely to the needs and interests of the Communist Party on the proletarian revolution.

The Negro Nationalist, therefore, from the Communist point of view, or as I regarded it then as a Communist
230 was a person who put the interests of the Negro people ahead of the interests of the Communist Party in their need to utilize the Negro people as a force for the overthrow of capitalism.

Mr. Abt: If the Court please, I move to strike out the witness's answer on the grounds that his concept of this term is certainly not binding on our client in this proceeding.

The Court: It may not be binding. However, it may stand.

By Mr. O'Donnell:

Q. If you recall at this time, what position did Mr. Lightfoot take on the question of Negro Nationalism?

A. He was strongly opposed to Negro Nationalism.

Mr. Abt: If your Honor please—

The Court: What did he say, if anything?

Mr. Abt: If there was a conversation, may we have the time and place?

The Court: That is right, and who were there.

Mr. Abt: And who were there.

The Witness: In view of the fact that—

The Court: No.

231 The Witness: I am sorry.

The Court: First of all, if there was a conversation, state when it was and who was there, as near as you can.

The Witness: In the course of discussion of this pamph-

let with Harry Hayward, with Claude Lightfoot, the problem of Negro Nationalism was discussed.

The Court: Yes, but when?

The Witness: I would say during 1936, in this series of conversations in connection—

The Court: In what month?

The Witness: The writing of that pamphlet in which a number of such discussions took place, probably went over six or seven months.

The Court: And the three of you were present?

The Witness: Yes.

The Court: All right.

The Witness: During many of the discussions of it there were other people, at other discussions.

In the course of these discussions with Mr. Light-
232 foot, the problem of Negro Nationalism was discussed.

I don't remember any specific statement he made, but I can certainly answer your question to the effect that Claude Lightfoot was—

Mr. Abt: Just a moment, please.

The Court: No.

The Witness: —was strongly opposed—

The Court: No. Wait a minute. You have answered the question.

233 By Mr. O'Donnell:

Q. Where did these meetings take place?

A. Mainly in Harry Hayward's apartment.

Q. I will ask you this question. During the course of these conversations, did Mr. Lightfoot state to you what his position was on this question of Negro Nationalism?

A. He was opposed to it.

Mr. Abt: Just a moment, your Honor.

That calls for a yes or no answer, I take it.

The Court: Yes.

The Witness: Yes.

By Mr. O'Donnell:

Q. And where?

A. I am sorry.

Q. And where did they——

A. In the course of these discussions.

Q. And where did they take place?

A. When we were discussing Negro Nationalism in connection with the pamphlet.

Q. Can you pin down the dates a little more specifically?

A. Again, as I answered his Honor a moment or
234 two ago, over the period in which this pamphlet was being written, in which I would not remember one discussion from another.

Q. And what did Lightfoot, Mr. Lightfoot, during these discussions state that his position was on this question?

A. He was strongly opposed to Negro Nationalism and highly critical of it.

Q. Did he tell you why?

A. In the course of the discussions of Negro Nationalism we all were in agreement upon the theoretical Communist position. We were opposed to it, Mr. Lightfoot among us, because it placed—

Mr. Abt: Just a minute, your Honor.

By the Witness:

A. (Continuing.) It placed other things—

The Court: No. That is not the question. Sustained. I mean it is not an answer to the question.

Mr. O'Donnell: Would the Reporter kindly repeat the question?

(The record was read by the Reporter as requested.)

The Witness: Because—

235 By Mr. O'Donnell:

Q. You can answer that yes or no.

A. Yes. I am sorry.

Q. "Yes"?

A. Yes.

Q. What did he tell you?

A. Because it weakened the possibilities of the Party carrying through its program among the Negro people and made it more and more—made it difficult for it to utilize the nationalist feelings among the Negro people for strengthening not primarily the Negro struggle but the general overall struggle, as one put it in Party language, of the working class under the leadership of the Communist Party for the establishment of socialism and the dictatorship of the proletariat.

Q. During the course of these meetings, did you discuss these problems with reference to Marxism-Leninism?

A. Yes, certainly.

Q. Was this pamphlet concerning which you have been testifying, was this ever published?

A. It never was finished, as a matter of fact.
Q. So it was never published?
236 A. That is right.
Q. And why wasn't it published or completed?
Mr. Abt: Objection, your Honor.
The Court: Sustained.

By Mr. O'Donnell:
Q. I will ask you this. Why wasn't this pamphlet finished?
Mr. Abt: Objection, your Honor.
The Court: Sustained.

By Mr. O'Donnell:
Q. Before you completed work on this pamphlet you have just been testifying concerning, did any of the group leave?
A. Harry Hayward left Chicago.
Q. Now, Mr. Meyer, during your membership in the Communist Party, specifically here in Chicago, Illinois, were all Communist Party members open members or free?
Mr. Abt: I object, your Honor, as to form.
The Court: Were they what?
Mr. O'Donnell: Open members of the Communist Party.
The Court: I really don't know what you
237 mean.
Mr. O'Donnell: If he knows, of course.
The Court: Well, I would like to know what you mean.
Mr. O'Donnell: Excuse me.

By Mr. O'Donnell:
Q. I was just asking whether or not they were all publicly known as members and publicly professed their membership in the Communist Party, or were they all persons in another category?
Mr. Abt: I object to the form of the question.
The Court: Pardon?
Mr. Abt: I object to the form of the question.
The Court: He may answer that question.
Mr. Abt: Pardon, your Honor?
The Court: He may answer the question he just stated.
The Witness: I am not sure that it was fully a question. I am sorry. Would you repeat it?
Mr. O'Donnell: I will ask the Reporter if she will
238 be so kind as to repeat it.
(The pending question was read by the Reporter.)

By the Witness:

A. No, all members were not publicly known.

By Mr. O'Donnell:

Q. What other type of members other than open members were there?

A. Various grades of concealed members, those who were simply careful among, let us say, in their place of employment, among people with whom they worked. Others were just underground—

Mr. Abt: If your Honor please—

The Court: Yes.

By the Witness:

A. Those were known to just a few.

The Court: Yes. Strike that out.

Mr. Abt: May I ask your Honor to ask the jury to disregard it?

The Court: I have told the jury anything that is stricken out, they are to disregard it, during the trial.

239 By Mr. O'Donnell:

Q. Would you continue without using the characterization that the Judge has stricken out?

A. There were members whose membership was totally and publicly known. There were members whose membership was generally known among their friends and associates but not in a profession, or whatever that may be. There were members whose membership was only known to a small number of Party members with whom they were associated. There were members whose membership was known only to top leaders of the Party. And there were members whose membership was known only to one or two top leaders of the Party.

Q. During your association with the Communist Party here in Illinois, were members given any instructions concerning the disclosure of their membership in the Party to the Court and other governmental organizations?

Mr. Abt: I object, your Honor.

The Court: He may answer that.

Mr. Abt: No connection with—

The Court: What was that?

Mr. Abt: No connection with the defendant at
240 all, your Honor.

The Court: He may answer it.

By the Witness:

A. Except in very rare cases or for special reasons, no Party member is ever supposed, was ever supposed to give his identity to the courts or police, or anyone of that sort.

Mr. Abt: I now move to strike it.

The Court: Strike it out.

By Mr. O'Donnell:

Q. During the time that you were a member here—I am going to ask you a series of questions that will be referring to your membership here in Illinois in the period you have been testifying about. Did the Communist Party keeps records during your association with them?

A. Some records, but, depending on the time, in certain periods reasonable records, in certain periods none at all.

Mr. Abt: If your Honor please, just so that the record may be clear, I take it this is all going in over my continuing objection as to remoteness, am I correct?

The Court: That is right.

241 By Mr. O'Donnell:

Q. And were there membership books issued in the Communist Party?

A. Except at certain periods, during certain periods they were not issued; during other periods they were issued.

Q. And when they were issued, how often were they issued?

A. Annually.

Q. Now, you referred to a period when they were not issued. When was that?

A. While I was in Chicago, that period would be during the period of the Hitler-Stalin non-aggression pact, when the Party found it was unpopular—

Mr. Abt: Just a moment.

The Court: He asked you when. The rest may go out.

By Mr. O'Donnell:

Q. When was it?

A. During the Hitler-Stalin non-aggression pact. That would be during the period from late 1939 to June of 1941.

That couldn't affect the 1939 cards. It would have
242 affected the 1940 and 1941 ones, as I remember it.

Q. Were you present at any Communist Party

meetings, conventions, when the reason for such action was discussed?

A. Yes.

Q. Where were those meetings?

A. You said committee meetings or convention, did you?

Q. Convention or meetings.

A. Meetings, yes.

Q. Which were you present at?

A. Meetings.

Q. What was the reason given for—

Mr. Abt: Now, your Honor, if we are getting a meeting, let us get it.

The Court: I beg your pardon.

Mr. Abt: If we are going to have a meeting, let us have the time and place and who was present.

The Court: Yes.

Mr. Abt: And who said what.

By Mr. O'Donnell:

Q. Where did the meeting take place?

A. I could not identify the house, because it was
243 a meeting of the organizational educational commission of the Party in Illinois-Indiana, and we were meeting at that time in somebody else's house at each time, very carefully and under special conditions, somebody's house.

The Court: Strike it.

Mr. Abt: If your Honor please, I wonder if you couldn't admonish the witness to abstain from—

The Court: Yes. Just answer the questions.

Mr. Parsons: I wonder, if your Honor would allow me, if I might make one observation. That is that some of the answers of the witness are intellectually as clear, as pure, as a simple answer could be. I was thinking in terms of the last answer, which was quite properly stricken—

The Court: He is asking the time. That means years, months, days, whenever it is.

Mr. Parsons: Yes. Counsel objected to the answer as to where they met—

Mr. Abt: I object to the conclusion and characterizations, and his Honor perfectly well understands me.

244 Mr. Parsons: The answer that was given, your Honor, was because he was describing that he did not

know exactly where they met, because of the nature of it, in which they went to the places, it was secret, as to coming and going there—

The Court: But he does not say when.

Mr. Parsons: And under those circumstances—

The Court: I assume he should answer the question, and that means when they were.

Mr. Abt: I take it your Honor's ruling stands?

The Court: Yes.

245 Q. When were the meetings held?

A. Late in 1939, the autumn of 1939, or late autumn.

Q. Do you recall who were present at those meetings, without stating the names at this time?

A. Some of them, at least.

Q. If I asked you their names could you state them, without stating them now?

A. I could state two or three, yes.

Q. Do you recall whether or not the defendant attended any of these meetings?

A. I don't remember him at any of them.

Mr. O'Donnell: If you will indulge me just a moment, your Honor, I will have just a few more questions of this witness.

By Mr. O'Donnell:

Q. Mr. Meyer, I would like to ask you this: Did you attend any national conventions of the Communist Party?

A. Yes.

Q. To your knowledge did Mr. Lightfoot attend any of the national conventions of the Communist Party?

A. Yes.

Q. Now, referring to the Communist Political As-
246 sociation, was there any change in the line of the Communist Party at that time with reference to the use of these books we have been discussing this morning?

Mr. Abt: I object, your Honor.

The Court: He may answer.

By the Witness:

A. Yes.

Mr. Abt: I simply want to call attention, your Honor, to the fact that it appears from the Selective Service records, as was shown here yesterday, that during that time Mr. Lightfoot was in the armed forces, during that period.

The Court: He only asked him whether there was a change.

The Witness: Yes.

By Mr. O'Donnell:

Q. Were the same text books used by the Communist Party educational during that period as had been used previously?

Mr. Abt: I object, your Honor.

The Court: He may answer:

247 By the Witness:

A. Externally, that is, in open public schools they were used much less; in the inner Party schools they were used equally as before.

By Mr. O'Donnell:

Q. Was any other type of material substituted for the use of these in the open Party teachings? You may answer that yes or no.

Mr. Abt: Your Honor—

The Court: If he knows he may answer.

By the Witness:

A. Yes.

By Mr. O'Donnell:

Q. What was the nature of that?

Mr. Abt: I object.

The Court: Sustained.

By Mr. O'Donnell:

Q. These books that we have just been discussing here this morning continued to be used?

Mr. Abt: Your Honor—

The Witness: I am sorry, I didn't hear the question.

The Court: He said he didn't hear the question. Wait until he has stated it.

248 By Mr. O'Donnell:

Q. All right. I am not sure I recall your testimony. I said what was the relation to the use of these documents you testified to.

A. They continued to be used in the inner Party schools through that period, but they were not used to such a great degree in the external schools.

Mr. Abt: If your Honor please, I would like to move to strike that for the following reasons:

First, this witness testified that he left Chicago in 1942, and had not seen Mr. Lightfoot since. He therefore has no knowledge of what took place in Chicago and no knowledge of what Mr. Lightfoot did and, in addition, during the period about which he is now talking, 1944 and '5, Mr. Lightfoot was not even in the country, but was in the armed forces in England.

Mr. Parsons: If the Court please, that answer goes to the other objective in this case, and it is somewhat material.

249 The Court: You expect to have some evidence?

Mr. Parsons: Yes, we have witnesses. We must prove that.

Mr. Abt: Mr. Parsons and I have not come to grips yet.

Mr. Parsons: Then perhaps we might come to grips now.

The Court: Wait.

Mr. Abt: It seems to me it is elementary that no evidence can be offered against Mr. Lightfoot about knowledge of matters about which he has no knowledge whatever.

Mr. Parsons: May I reply?

We will come to grips later. That is one of the things that is coming up and which makes it necessary that there be proved an element of defense.

The Court: You expect to connect it?

Mr. Parsons: We expect to connect it to the Communist Party, yes.

The Court: I mean the defendant.

Mr. Parsons: We expect to connect his testimony. Also, this is necessary to the Communist Party.

250 Mr. Abt: Not to the defendant but to the Communist Party?

The Court: Do you expect to connect it?

Mr. Parsons: And to connect the defendant to the Communist Party.

The Court: It may stand, with that understanding.

Mr. Parsons: May it please the Court—

The Court: Is there any further cross-examination?

Mr. O'Donnell: No further direct.

The Court: I mean direct.

You are going to turn the witness over for cross after the introduction is made, is that correct?

Mr. O'Donnell: Yes, your Honor.

The Court: The jury will recess.

You may step down.

251 (Whereupon the following proceedings were had out of the hearing and presence of the jury:)

The Court: Now, Mr. Parsons.

Mr. Parsons: May it please the Court, we would like to make an offer of exhibits.

The Court: Yes.

Mr. Parsons: At this time we ask that these be accepted in evidence, evidence as to one issue at this time.

We later will reoffer them to be accepted as to another issue, but as to the issue of the knowledge of the defendant of what the aims and purposes of the Communist Party are, whatever that knowledge may be, these documents, which constitute the text books which he himself taught in the schools of the Communist Party, text books which were taught under the direction of the Communist Party and at the direction of the Communist Party, which have been identified by his own director of the school in which he taught, his own principal, his own superintendent

252 so to speak, are directly material, they are relevant and they are competent as to the issue of what he knew as to the aims and objectives of the Communist Party.

If these records show the things he knew, that the Communist Party does not advocate the overthrow of the United States by force and violence, then they are competent to show that.

If these books go to show that what he knew was that the Communist Party does advocate that then they are material to show that.

What a person knows is not something that dies the day after he acquires it. We can prove a person's knowledge only by a series of experiences through which he goes over a period of time.

The probability of what he knows, what any person knows, his knowledge, may be proved in a court of justice from evidence submitted as to what he was exposed to from the time he was old enough to understand up to

253 the time the statutory period begins.

We realize the importance of not asking to show the jury at this time a large group of volumes.

Your Honor made that very clear to us all through the discussions and through this. That is the reason we came back to emphasize certain passages.

The Court: What do you expect to prove by those passages?

Mr. Parsons: These passages will prove whether or not they do advocate it, because if it proves one way or other, one way or the other then they are material, what objective the Communist Party does have.

The Court: What are they to attempt to prove in fact in the case?

Mr. Parsons: These passages will prove what he would know, whether or not that was the objective of the Communist Party.

The Court: What do you claim? What are those?

Mr. Parsons: The issue of the aims are in the indict-
254 ment, and that is that the Communist Party advocated the overthrow of the United States.

The Court: Do you claim those books show that?

Mr. Parsons: Yes.

The Court: Those passages?

Mr. Parsons: Yes, your Honor.

We don't want to put all of the books in, just these passages, and they have been read already in the record so many times we don't want to repeat them.

Mr. Abt: Before I answer I would like to get clear just what he proposes to do.

Are you going to read them to the jury?

Mr. Parsons: Not at this time.

Mr. Abt: At some later time?

Mr. Parsons: Later we are going to offer them again.

The Court: What is the purpose of two offers?

255 Mr. Parsons: These are material to his knowledge at this time, your Honor, to his knowledge of the Communist Party, the aims and purposes of it.

The Court: What is your idea of the limitation for which they could be offered in evidence?

Mr. Parsons: What I really had in mind is that I don't care to read them to the jury at this time. I don't feel that we should hold this witness up at this time and start reading them.

It is near the end of the week and the case drags out by reading. That was my reason. I just want to reserve the privilege of reserving reading of them until there is some other witness on the stand.

The Court: I think I will delay my ruling on them until that takes place. I see no reason for ruling on them at this time.

Mr. Parsons: Under those circumstances, your Honor, since this witness has qualified these exhibits—

The Court: I beg your pardon?

256 Mr. Parsons: Since this witness has qualified these exhibits and these exhibits had been qualified on the testimony of this witness who was the instructor at the school, or director, the school at which he testified he taught.

The Court: I see no reason or purpose for offering them twice or ruling on them now.

Mr. O'Donnell: Excuse me.

The Court: Pardon?

Mr. O'Donnell: Excuse me. May I talk to Mr. Parsons a moment?

Mr. Abt: There are a lot of things I would like to say, but I shan't say them until we straighten out the question of whether you are prepared to rule on them. I don't want to argue until you are ready to rule on them. I simply want to inform you there are lots of things I would have to say.

Mr. Parsons: The Court will remember the testimony of this witness. We had just as well hold them until the other witness is on the stand.

257 The Court: I think that is proper. If you want to introduce them at that time I will hear you.

Mr. Parsons: We can still retain the qualifications of this witness.

The Court: You can't erase his testimony.

You may recess for just a few minutes.

Mr. Abt: How late do you expect to run?

The Court: Oh, about 12:20.

(A short recess was taken.)

258 The Court: You may proceed.

Mr. Crockett: If it may please the Court, I have a motion to address to the Court.

The Court: Beg your pardon?

Mr. Crockett: I have a motion to make at this time.

It appears from the testimony that all of the testimony given by this witness—

The Court: A little louder.

Mr. Crockett: It appears that all of the testimony given by this witness either antedates the passage of the statute that is involved in this proceeding or they antedate the indictment.

Accordingly, I move the Court to strike all of the testimony of this witness since it would have no bearing on the issues that are being tried here.

The Court: I think that was made by Mr. Abt. However, I will consider the motion again, and deny it at this time.

Cross-Examination by Mr. Crockett.

Q. Now, Mr. Witness, all of the books that you
259 have identified this morning are based upon your recollection as refreshed by Exhibit No. 38, is that right?

A. No, sir. Only the passages in the books were refreshed.

Q. Only the passages?

A. Yes.

Q. You don't know of your own knowledge whether or not Exhibit 38 was actually used by Mr. Lightfoot, do you?

A. With perhaps slight modifications, I know it was used by Mr. Lightfoot. In its exact form, I am not sure, because it sometimes was revised slightly from month to month. If he taught in April, 1941, which I do not know, he used this precisely.

Q. Let me call your attention to your testimony of yesterday which appears on page 131 of the transcript.

You were asked with reference to Exhibit No. 38:

"Q. Do you know whether or not defendant Lightfoot used this exhibit?"

And your answer was, and I quote:

260 "A. I can only presume so. I don't know specifically. He must have done so. It was prescribed for the school, and he was the teacher of the course. I cannot specifically remember at this point."

Do you remember that testimony?

A. Yes, sir.

Q. When did you enter the Army?

A. In October, 1942.

Q. Do you know whether or not the defendant Lightfoot had already entered the Army at that time?

A. I think he entered late, I am not sure, but my memory is he was still around when I entered the Army.

Q. Now when were you discharged from the Army?

A. In late February, 1943.

Q. Did you return to Illinois?

A. For about three or four days.

Q. Did you see the defendant Lightfoot during that time?

A. During those three or four days, I do not think so, no.

Q. Have you lived in Illinois since you were discharged from the Army?

261 A. No.

Q. Have you had any position in the Communist Party of Illinois since you were discharged from the Army?

A. Of Illinois?

Q. That is right.

A. No.

Q. Tell me, were you a member of the Communist Party while you were in the Army?

A. In the technical sense that all the Communists were supposed to cease to be members when they entered and became one again when they came out, I was not.

For all practical purposes, I was.

Q. Have you had any communication at all with the defendant Lightfoot since you were discharged from the Army?

A. No.

Q. Now the period covered by this indictment begins on July 26, 1945 and terminates on May 14, 1954.

Did you see the defendant Lightfoot at any time during that period?

A. No, sir.

262 Q. Did you communicate with him at any time during that period?

A. No, sir.

Q. You know nothing whatever about his activities during that period?

A. Except what I read in the papers.

Q. You have no personal knowledge of any of his activities?

A. You mean apart from reading in the press?

Q. That wouldn't be personal knowledge.

A. No, no direct knowledge.

To be more accurate, if I heard someone else about what he was doing, that is not personal knowledge either.

Q. Have you attended any meetings of the Communist Party in Illinois during the period covered by this indictment?

A. No, sir.

263 Q. Do you have any personal knowledge of any of the members of the Communist Party of Illinois during the period covered by this indictment?

A. No, sir.

Q. One final question:

Have you any personal knowledge of what, if any, use Mr. Lightfoot may have made of the books which you have identified this morning during the period covered by this indictment?

A. Direct personal knowledge, no, sir.

Q. Any personal knowledge?

A. No, sir.

Mr. Abt: May we have just one moment, Judge?

By Mr. Crockett:

Q. You testified this morning, Mr. Witness, that your recollection of these books was based on conversations that you had with the defendant at the Workers School in early 1940, is that right?

A. Not my recollection of the books, the books I know very well and intimately. My recollection of my discussions of the books with Mr. Lightfoot was of those conversations. I have lived with those books for ten years.

264 Q. And these conversations were in early 1940?

A. One set of them certainly was, yes, the set when we first were transforming from Marxism-Leninism to C. P. S. U.

Q. What would be included in that set?

A. I can't hear you.

Q. What books would be included in that set? You said one set of them.

A. No, one set of conversations. Each time Mr. Lightfoot taught a course, he taught many courses, I would have conversations with him.

The particular question I was asked at the time—I think the record would show—at any time, did you have more discussions with teachers than at any time—I think my answer to that was in early 1940, and then the rest of the discussion went on to this.

Q. But you don't recall specifically when you had these discussions?

A. The particular set I was speaking of was in early 1940, yes, but not the only discussions of the classics or of teaching that I ever had with Mr. Lightfoot.

Q. That is as definite as you can be?

265 A. I am being very definite. I am saying I had many, but one particular set was had in early 1940.

Q. Now you can recall after fourteen years particular pages of all of these books and state under oath that you are positive that you discussed those pages with Mr. Lightfoot, is that your testimony?

A. That is definitely my testimony.

I lived with those books for, I said, ten years, I should have said fourteen or fifteen years.

I know I was able to find today passages I was looking for in a book I hadn't seen in many years, but I am familiar with most of them even in the intervening period as I have been doing a good deal of writing on Communism lately and have been going over the material again and again.

Q. But you recall specifically the pages that you discussed?

A. Not by number. When I look at the book, I can see the pages and see there are certain things on them, and I can tell you, however, there are certain questions discussed in a certain book. Give me the book, in three minutes I will look it through and find you where.

266 Q. Do you recall how many discussions you had with the defendant Lightfoot during this period concerning these books?

A. Three or four.

Q. And about how long were each of those discussions?

A. An hour and a half or so.

Q. And this was over what period of time?

A. Over two or three weeks at the beginning of that term.

Q. And this was in early 1940?

A. Right.

Mr. Crockett: That is all.

The Court: Call the next.

(Witness excused.)

Mr. O'Donnell: Your Honor, I have called him, and he will be ready in a few minutes.

The Court: While I think of it, Mr. O'Donnell, I wish you would leave those books with my secretary in the outer chambers at the close of this session tonight.

Mr. O'Donnell: Yes, your Honor. Thank you.

The Court: I will have them back tomorrow morning.

Mr. Parsons: Begging the Court's indulgence, the
267 Government's next witness is on his way here.

The Court: You ought to have him in the witness room so you don't have to go looking for him.

Mr. Parsons: Yes, your Honor.

JOHN LAUTNER, called as a witness on the part of the Government, being first duly sworn, testified as follows:

Direct Examination by Mr. Parsons.

The Court: What is your name?

The Witness: My name is John Lautner.

The Court: How do you spell it?

The Witness: L-a-u-t-n-e-r.

The Court: Where do you live?

The Witness: My address is the Department of Justice Building, Room 3266, Washington, D. C.

The Court: And in what capacity are you there?

The Witness: I am a consultant for the Department of Justice, Internal Security.

By Mr. Parsons:

Q. You state your name is John Lautner. How did you spell that, Mr. Lautner?

268 A. L-a-u-t-n-e-r.

Q. Is there a middle name?

A. No.

Q. Are you acquainted with the Communist Party?

A. Yes.

Q. Do you know Claude Mack Lightfoot?

A. Yes.

Q. Do you see him in the courtroom?

A. Yes.

Q. Would you point him out, standing up, please?

A. He is sitting at the counsel table there (indicating).

Mr. Abt: It is stipulated that the defendant has been identified by the witness.

Mr. Parsons: Thank you, Counsel.

Would you be seated, please, Mr. Lautner.

By Mr. Parsons:

Q. Where were you born, Mr. Lautner?

A. I was born in Hungary.

Q. And when?
A. On the 1st of January, 1902.
Q. Are you a citizen of the United States?
A. Yes.
269 Q. How are you a citizen?
A. I was naturalized in 1926, in Youngstown, Ohio, in the Common Police Court in that city.
Q. When did you come to the United States?
A. When I was about sixteen months old, 1904, and I was taken back to Europe at the age of six, and came back again in 1920.
Q. Your parents came over with you when you came, did they?
A. My father was here. I came with my mother.
Q. Are they living now?
A. They both are dead.
Q. What other members of your immediate family are living?
A. I have three brothers and two sisters.
Q. Where are they, sir?
A. They are two brothers are in Youngstown, Ohio; my two sisters are also in Youngstown, Ohio; and one of my brothers is somewhere Upstate, New York.
Q. Did you attend any schools while you were in Hungary?
A. Yes.
Q. What schools?
A. Public school, high school, and a year and a
270 half in Teachers' College.
Q. Did you attend any schools or colleges while you were in the United States—after you came to the United States?
A. No.
Q. Now your occupation, what occupations have you had since coming into the United States?
A. Well, I worked in the steel mills in Youngstown, Ohio. Then I learned a trade. I am a bricklayer by trade, and then I was a Communist Party functionary for about twenty years.
271 Q. And you are a member of the Communist Party now?
A. No.
Q. You have been, is that it?
A. Yes.

Q. Will you tell us when you joined the Communist Party?

A. I joined the Communist Party in 1929.

Q. How old were you then, sir?

A. Well, I was past 26.

Q. What were the circumstances of your joining the Communist Party?

A. Well, I was in New York, working in New York, and I joined a dramatic club that was controlled by the Communist Party at that time—

Mr. Abt: Object to the characterization.

The Court: Yes, sustained.

By the Witness:

A. And through association with members and leaders of that club, and by invitation, I joined the Communist Party in 1929, somewhere around November.

By Mr. Parsons:

Q. You said when you were in New York, when did 272 you go to New York?

A. In 1927.

Q. From where did you go?

A. From Youngstown.

Q. From Youngstown, Ohio?

A. Youngstown, Ohio.

Q. What work were you doing when you joined the Communist Party, if any?

A. Well, I was in my trade at that time, and when I joined, I was assigned the usual—

Mr. Abt: Just a moment, your Honor, I think the question has been answered.

The Court: I think so.

We will recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day, Thursday, January 13, 1955.)

273 Before Hon. Philip L. Sullivan, Judge; and a Jury.

Thursday, January 13, 1955.
2:00 o'clock P. M.

Court met pursuant to recess.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government;

Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

274 The Court: You may proceed.

JOHN LAUTNER, called as a witness on the part of the Government, being previously duly sworn, resumed the stand and was examined and testified further as follows:

Direct Examination (Resumed) by Mr. Parsons.

Q. Mr. Lautner, will you tell us what your first activities with the Communist Party were?

A. At the time I joined the Party I was assigned to a unit of the Communist Party in New York City, in Yorkville. As a member I had to attend meetings. I had to pay my dues, and I had to carry out my Party assignments, such as attending Party activities, like street corner meetings, attending to our concentration task, at that time going to laundries in our territory over there and holding shopgate meetings, to sell and distribute "The Daily Worker."

These were the assignments at the time in that particular unit of the Party.

Q. Did you attend any school?

A. Later on, in 1930, in the late spring of 1930, I was assigned to attend a national training school of the
275 Communist Party, and I was a student in that school.

I graduated from that class, and then I got another assignment.

Q. What was that other assignment?

A. I was sent to Detroit, Michigan, as a district functionary of the Communist Party. Specifically I was in charge of a nationality group, the Hungarians, in Detroit, where we had to develop the Party activities in relation to building the Party in the Hungarian community, and in the Auto Workers' Industrial Union at that time.

Q. Back to this school that you attended, this first school, where was that located?

A. That school was located in New York City on Union Square, at that time known as the Party Building. It was on the top floor of that Party Building at that time.

Q. Can you describe for us that Party Building.

A. That Party Building was a five-story building. "The Daily Worker" was in that building, the printing office, the printing establishment. "The Daily Worker" editorial offices, the district organization of the New York organization of the Communist Party was in that building. And on the top floor were the editorial offices of the Hun-
276 garian daily Communist paper.

Q. What course were you taught in that school?

A. In that school we had Leninism, by James Lustig—

Q. When you say "by James Lustig," what do you mean?

A. He was the instructor.

Q. I see.

A. James Lustig was the instructor.

Q. Go right ahead.

A. We had Political Economy; that was taught by J. Peters. We had The Decisions of the Sixth World Congress of the Communist International, taught by John Sonto. We had Dialectical Materialism, taught by Dr. John Getway. We had Problems of the Communist Party Organization, by J. Louis Engdahl. We had The Communist Manifesto, by Louis Bebritch. We had also Party Organization, by Gus Meyer, and other subject matters and lectures.

Q. Then you said you went to Detroit, is that right?

A. Right.

Q. This assignment in Detroit began when?

A. It began around the beginning of July, the beginning of July, 1930. When I got to Detroit I was im-
277 mediately assigned to go down to Chicago to the first unemployment conference here, and—

Q. Do you know where that conference was ,sir?

A. I think it was held in the Ashland Auditorium, and we had a big demonstration and—it could be Humboldt Park. I was on the steering committee at the time of that demonstration.

278 Q. How long did that conference last?

A. That conference lasted, I think, two days.

Q. Did you meet any of the Party functionaries in Chicago at that time?

A. Well, yes. We had a Party caucus—

Mr. Abt: Just a minute, your Honor, I think the question has been answered.

The Court: I think the question has been answered.

By Mr. Parsons:

Q. Where did you meet these functionaries, sir?

A. In an old red brick church, I wouldn't know where it is now; I remember it was an old red brick church.

Q. What was the occasion, sir?

A. The occasion was to have a Party caucus as to the nature of the conference and the nature of the demonstration, and assignments in carrying out a successful unemployment conference and demonstration. The reporter at that Party caucus was Clarence Hathaway, who was at that time a district organizer of the Communist Party here in Illinois.

Q. After that conference you went back to Detroit,
279 is that right?

A. That is correct.

Q. And what did you do then?

A. Well, I gave leadership in carrying out the Party decisions and the Party campaigns in the Hungarian community there.

Mr. Abt: If your Honor please, I again object to the characterization, that he gave leadership.

The Court: Sustained.

Mr. Parsons: May I approach the bench, your Honor?

The Court: Well, the characterization—

Mr. Parsons: About another matter.

The Court: Pardon?

Mr. Parsons: About another matter.

The Court: Very well.

(The following proceedings were had in open court, in the presence but not in the hearing of the jury:)

Mr. Parsons: Judge, I feel I hear a bit of a ring in

the sound system that is somewhat disturbing. I wonder if there is any way that that could be checked on by the—

280 The Court: You hear a ring?

Mr. Parsons: A ring back from the desk.

Mr. Abt: It hasn't bothered me.

Mr. Parsons: Perhaps he is sitting too close. I will ask him not to sit too close.

The Court: Oh, yes. I don't get it, however.

(The following proceedings were had in open court, in the hearing and presence of the jury:)

By Mr. Parsons:

Q. Did you have an official position in Detroit?

A. Yes.

Q. What was that?

A. I was District Secretary of the Hungarian Bureau in Michigan.

Q. What were your duties in that position, sir?

A. My duties were to carry out the Party decisions and the Party campaigns in the Hungarian community and to give leadership in that respect, and build the Party in the Hungarian community and build the circulation of the Party press in the Hungarian community in Detroit,

281 Michigan, and then also later on, in the capacity as Secretary of the District Control Commission, give leadership in Party vigilance in the Michigan District, to sit in on disciplinary cases, render decisions in disciplinary cases in the Party.

These were in the main my assignments in Michigan.

Q. Did you receive compensation for this work?

A. Yes, I was a full-time functionary at that time, and I did receive a compensation.

Q. What compensation?

A. Well, I was supposed to get, I think, about $50.00 a week at that time, and sometimes it didn't come. I was considered a full-time functionary. These were the depression days, and sometimes we just functioned and—

Q. Did you have any other job?

A. Yes, I did get a job, I got a job in the Amtorg offices in Detroit, that was later on, towards the end of 1930, and I worked as a switchboard operator in the Amtorg offices.

282 Q. What does Amtorg mean? What is it?

A. Amtorg is—Amtorg Trading Corporation was

set up as a trading corporation in this country to expedite and initiate trade with the Soviet Union at that time.

Q. Who if anyone was your supervisor in your Party activities at that time?

A. In Detroit, Michigan, the district organizer when I came to Detroit was Jack Statchel. Later on Statchel was re-assigned to New York, and the district—

Q. Who is Jack Statchel, by the way?

A. Jack Statchel is—

Mr. Abt: I object, your Honor.

The Court: He may answer if he knows.

By the Witness:

A. (Continuing) —was a member of the National Committee of the Communist Party and a member of the National Board, and at one time, for a long period of time, he was executive secretary of the Communist Party. He was considered one of the top Party leaders. And also there were other district functionaries, such as secretary. In the Detroit district was Sam Milgrom.

By Mr. Parsons:

Q. What was your next, if any, Party assignment?

A. My next assignment was to Canada.

283 Q. When was that?

A. That was in the spring of 1931. I was—

Q. What was that assignment?

A. I was re-assigned to Canada to become editor of a Communist weekly paper over there and to give leadership to the Hungarian nationality group in Canada at that time.

Q. Was there a title to that responsibility?

A. Yes, I was national bureau secretary of the—national Hungarian bureau secretary of the Canadian Communist Party.

Q. How did you acquire that assignment, sir?

A. By being assigned by the Communist Party Central Committee or Commission.

Q. Was that the Communist Party of the United States or Canada?

A. The Communist Party of the United States assigned me, and I was introduced there in Canada when I went there.

Q. Under what circumstances, if you know, would the Communist Party of the United States assign you to a responsibility with the Communist Party of Canada?

Mr. Abt: I object, your Honor.
The Court: He may answer that.

284 By the Witness:

A. By a request of the Canadian Communist Party to send a leading Hungarian Communist over to Canada to help them out in a certain assignment.

By Mr. Parsons:

Q. I see. And what—
A. And on that basis I was re-assigned and I went there.
Q. How long were you there, sir?
A. I was there approximately eleven months.
Q. And that carried you up to what year?
A. It carried me up to about the end of the year, the beginning of—the end of 1932 and the beginning of 1933.

285 By Mr. Parsons:

Q. Then what did you do if anything?
A. No. Wait a minute. I went there in the spring of 1931 and stayed there until about January or February of 1932.
Q. Then what did you do?
A. I was assigned to Cleveland, Ohio where I became one of the editors of a magazine, a community paper in Cleveland.
Q. What was the name of that?
A. The New Forward.
The Court: In what year?
The Witness: That was in 1932, your Honor, in the spring of 1932.

By Mr. Parsons:

Q. Did you have any other duties?
A. A district bureau secretary of the Communist Party in the Ohio district.
Q. And what were your duties as such secretary?
A. To give leadership to the Communist Party in Ohio in the various cities such as Cleveland, Akron and Canton, et cetera, and see that Party decisions were properly translated, to build the Communist Party in the basic industry there like steel and metal, and to recruit new members
286 for the Party and build the circulation of the Communist Party press in Ohio.

Q. Were there any school activities there?

A. While there I was school director in a national training school in the summer of 1932, yes.

Q. If you know, how were you assigned to these responsibilities?

A. By the Work Commission of the Central Committee of the Communist Party, upon suggestion or recommendation of the National Hungarian Bureau.

Q. In this school are you acquainted with what courses were taught, sir?

A. Yes.

Q. What courses were taught there in the school in Cleveland?

A. I was the school director, and I worked out the curriculum, and I also worked out the composition of the student body, and I also worked out the location of the school.

I did not teach myself in the school, but the school was in my charge.

287 Q. What courses were there?

A. The same courses I took in 1930 in the National Hungarian School.

Q. How long were you in Cleveland?

A. I was there up to about the fall of 1932, and I was reassigned then to New York.

Q. What was the assignment in New York this time?

A. Well, the assignment was not a full-time assignment; it was a temporary assignment.

Q. What was that?

A. I was placed on the District Language Commission.

Q. What were your duties?

Q. That was a language department. To give leadership to the various national groups in the New York Party, and the Party application of Party decisions in the national groups, and to see that the Party line is being carried out in the respective nationality groups. Then particularly my specialization was to work together with the Latin-American groups, the Puerto Ricans and the Spanish speaking groups.

Q. Who assigned you?

A. The District Commission of the New York organization of the Party by the Executive Secretary, Max

288 Steinberg.

Q. Now, how long were you there, sir?

A. I was in this assignment and I worked with my dad in construction trades.

Q. You mean your own father?

A. It was not a full-time assignment. I got my full-time assignment in 1933.

Q. What was that?

A. As section organizer of the Communist Party in New York on the Upper West Side.

Q. What were your duties?

A. As section organizer it was my duty, first of all, to attend section organizational meetings which were held weekly, to get instructions and to convey and translate these instructions into activities in the sections to which I was assigned; Party campaigns and Party building drives, press campaigns, and also to carry out my personal control tasks in the section there, the control task as to the concentration on the railroad. We had a railroad yard in that territory, and there was a power house at the fringe of the section.

Q. When you say concentration on the power house what do you mean?

289 A. That meant the section had specific tasks. Besides carrying out the Party campaigns, a special task to build the Party in that section, that railroad yard.

290 Q. You say you were paid at that time by the Party?

A. Yes. Well, the railroad yard was one of the control tasks. Then we had an armory there and had the task to build the Party in the group, the training unit that trained in that armory. Also there was a power house at the fringe of the section, to see that leaflets were distributed there.

Q. Then where did you go, if you went anywhere?

A. I was in that section up to about April, 1936 when I was re-assigned as district organizer of the Communist Party in the State of West Virginia.

Q. If you know, who assigned you to that?

A. The Work Commission, and specifically Jack Stachel, who was the Executive Secretary of the Communist Party there.

Q. Is that the Communist Party of the United States?

A. That is correct.

Q. What were your duties as district organizer in the State of West Virginia?

A. My duties were to give leadership in the Communist Party in the State of West Virginia, to represent the Central Committee in the State of West Virginia, to carry out the Party campaigns in that state, build up the
291 Party, build the Communist Party press in the State of West Virginia, and to build up the so-called organizations friendly to the Communist Party in the State of West Virginia, the Party control organizations.

Q. Were you responsible back to this organization that appointed you?

A. Yes. There too I had a specific control task to build the Communist Party in the mining industry, in the coal industry in that state.

Q. How long were you there?

A. I was there from April, 1936 to the end of 1940, almost five years.

Q. Did you move into the state?

A. Yes, I did.

Q. Did you hold that same position throughout those years?

A. Yes. From 1936, April, to the end of 1940.

Q. You received compensation in this position, too?

A. Yes, full time functionary.

Q. Would you let us know how much this time?

A. Well, first of all, I got a subsidy from the National Office, which was $50 a month. I had two cars from the National Office. I had all kinds of other equipment.
292 I had a 16 millimeter Victor sound projection machine and had film projection supplies and film supplies.

Mr. Abt: If your Honor please, I don't think that is responsive.

The Court: I don't think it is.

293 By Mr. Parsons:

Q. What else did you do if anything in the West Virginia position?

A. Well, besides—that is all I did. I was a full time functionary of the Communist Party.

Q. Was there a school there?

A. No, we didn't have organized schools as such. What we did have were study circles and seminars and small groups of people. They were organized, not organized in a systematic way, but from time to time as the things developed we had discussions.

At one time—

Mr. Abt: Your Honor, it seems to me we would get along faster if the witness would confine himself to the answer.

The Court: Yes. Confine yourself to answering the question.

Mr. Parsons: Thank you.

By Mr. Parsons:

Q. What work materials, or were work materials used with these discussion groups?

A. Yes.

Q. What materials were used?

A. We used the Little Lenin material such as "Foun-
dations of Leninism," "Problems of Leninism," "His-
294 tory of the C. P. S. U.," "State and Revolution Pro-
gram of the C. I.," and similar pamphlets and subject matter from the Little Lenin.

The only organizational or organized school we did have—

The Court: No, I think you have answered the question.

By Mr. Parsons:

Q. Were there any other discussion groups?

A. Yes. During two summers we had instructors from New York who conducted classes, but I was not exactly involved in the teaching part of it.

Q. Who were those instructors?

Mr. Abt: Your Honor, I have not been objecting to anything here, any of this, because I assumed it was simply to go over the man's duties in the organization and his qualifications.

Mr. Parsons: I realize that, your Honor.

Mr. Abt: I suggest that we don't get into details, because if we do get into details, or Mr. Parsons does, I will certainly want to state something.

295 Mr. Parsons: I realize I have been quite extensive in qualifying this witness, your Honor. If counsel insists then I will be glad to make an offer of proof.

We do intend to qualify him.

The Court: I think you may make your offer of proof.

Mr. Abt: I am not objecting to that.

The Court: But some of the details.

Mr. Abt: The details I see no purpose in.

Mr. Parsons: That is all of that.

By Mr. Parsons:

Q. Mr. Lautner, after you left West Virginia where did you go, if anywhere?

A. I was assigned to the national training school of the Communist Party in the spring of 1941.

Q. If you know, why were you given that assignment?

Mr. Abt: I object.

Mr. Parsons: If he knows.

The Court: He may answer.

By the Witness:

A. Well, I was told by the person who assigned me, Roy Hudson, that I needed a refresher, and I was designated to go into this training school.

By Mr. Parsons:

Q. Where was this training school conducted?

296 A. This training school was conducted in New York City in various places.

Q. Can you tell us the courses you took, if any?

A. Yes, sir.

Q. What were they, sir?

A. We took a course in Marxism-Leninism, which was taught by George Siskin.

We took a course in Political Economy taught by Poplindial.

We took a course in the History of the Communist Party of the Soviet Union taught by Sam Carr.

We took a course in Party Organization and Problems, taught by John Kingson.

We took a course on Party Problems, taught by Judd Johnston.

We took a course on American History, taught by Francis Franklin.

We took a course on the Negro problem, taught by James W. Ford.

We took a course on General Science given by a person by the name of John.

We had lectures on various topics given by Rudy Baker and others.

297 We had a course on American Imperialism, taught by Everett Landley.

And there was other subject matter.

298 Q. Were texts used in connection with these courses?

A. Yes.

Q. Let me show you, Mr. Witness, Government Exhibits marked for identification 22, 25, 19, 41, 23 and 21, and ask you to look at them.

I wish to ask you a question concerning them.

In connection with your courses there, can you identify any of those exhibits as being the texts that were used at your school where you studied?

Mr. Abt: Mr. Parsons, may I have those exhibit numbers again?

Mr. Parsons: I will be happy to call them off again.

Before answering, Mr. Witness, may I aid counsel?

22, 21, 19, 23, 41 and 25.

Are you ready to answer?

The Witness: Yes.

By Mr. Parsons:

Q. What is your answer, sir?

A. Well, amongst the others, these are some of the books that were used in that class.

Q. Thank you.

299 Did you read these books?

A. In our work in the class, these books were at our disposal, too.

Mr. Abt: If your Honor please,—

The Court: The question was: Did you read them?

The Witness: Well, if the question is, did I read the books cover to cover, that is not the way you study in a Communist Party school.

Mr. Abt: If your Honor please, I think—

The Court: Did you read the books?

The Witness: I—

Mr. Parsons: May I withdraw the question?

By Mr. Parsons:

Q. Did you study these books?

A. I did.

Q. What other books, if you recall, other than these which we have shown you, were used in connection with your courses there?

A. Well, we had three little red-covered volumes called "Strategy and Tactics." "The Theory of the Proletarian Revolution," and "The Dictatorship of the Proletariat." Those three books were also used.

300 We also used the Program of the Communist International.

We also used the Resolution of the Communist Party of the 1940 Convention.

We also used "Das Kapital" by Marx.

We used all Lenin's "Selected Works", Selected Works and Collected Works, it was at our disposal in our study.

So was "Leninism" by Stalin.

So was "The Little Lenin Library Series" that appeared up to that time. I think there were 27 or 28 issues.

301 Q. Mr. Witness, let me show you five other government exhibits all marked for identification numbered 27—

Mr. Abt: Will you call out the title too, Mr. Parsons?

By Mr. Parsons:

Q. (Continuing.) —27, "Strategy and Tactics;" No. 28 being the "Theory of the Proletarian Revolution;" No. 29 being the "Dictatorship of the Proletariat;" No. 26 being the "Program of the Communist International;" and 47 being the Convention Number Resolutions and Reports, and I ask you to look at them.

I will ask you a question concerning them.

In connection with your studies at the Siskin School, do you recognize any of those exhibits as books which were used?

A. Yes, all of these were used in our study in that school.

Q. Thank you.

Let me show you Government's Exhibit 18 for identification and ask you if this also was used?

302 Mr. Abt: What is the title of that?

Mr. Parsons: That is The Communist Manifesto.

The Witness: Yes.

By Mr. Parsons:

Q. Thank you. Now, Mr. Witness, what was your next assignment, if any?

A. After graduation I was assigned to the Language Department of the Communist Party.

Q. Where was that?

Mr. Abt: May we have the date, please?

By the Witness:

A. In New York City.

By Mr. Parsons:

Q. Yes, would you give us a date on this, sir?

A. In May, 1941.

Q. What were your duties there?

A. And also in addition to that assignment, I also was assigned with our National Hungarian Bureau Secretary of the Communist Party of the U. S. A.

Q. In that first assignment you told us about, what were your duties?

A. My duties were to, in relationship with others of the Commission of the Language Department, super-
303 vise and give leadership to the Communist Party program and policies in all of the nationality groups, to see how the Party campaigns are reflected in their activities, see how the Party policy and the Party line is reflected in the nationality group press, in the Communist newspapers in the various nationality groups, to carry out the Party line and supervise its carrying out in the nationality groups.

Q. And then in the second of those assignments, will you give us that?

A. My specific assignment to give leadership to the Communist Party membership in the Hungarian community in the United States and to carry out the Party policies in that nationality group field.

Q. Now, how long did you hold those position?

A. I held that position up until November, 1942, when I was inducted in the Army.

Q. How long were you in the Army?

A. From November, 1942, up to June, 1945.

Q. Where did you serve while you were in the Forces?

A. I served—I am a graduate of War Department
304 Military Intelligence, Fifth Class, and I served overseas for twenty-five months in psychological warfare in the Psychological Warfare branch attached to AFHG, headquarters in Italy and in Africa.

305 Q. Did you engage in any Communist activity while you were in the Services?

A. No, no.

The Court: That is the answer.

By Mr. Parsons:

Q. Why not?

A. Because there was a decision by Browder that—the

then Secretary of the Communist Party—that all of those Party members who are inducted into the Armed Services are released from all Party's activities and from all Party obligations. That was the decision, and I adhered to that decision, and the very—

The Court: I think you have answered the question.

By Mr. Parsons:

Q. You came out of the Service when, sir?

A. June, 1945.

Q. Where did you go and what did you do, if anything, then?

A. Well, I reported back to the Communist Party Headquarters, to John Williamson who was the executive.

Q. Where was that you reported?

A. At 35 East 12th Street, New York City, the National Office of the Communist Party, and I was—I resumed
306 my old functions on the Nationality Groups Commission of the Communist Party—by that time the name was changed from Language Department to Nationality Groups Commission, and also as National Hungarian Bureau Secretary, and John Williamson also assigned to me certain documents to study and to attend the 1945 Convention.

Mr. Abt: Just a moment. If your Honor please, I move to strike that he was assigned certain documents to study.

The Court: That he was assigned to study?

Mr. Abt: Was assigned certain documents to study, and I missed the last few words.

Mr. Parsons: I will accept counsel's correction, and ask that the answer be stricken. It is not in its entirety responsive.

The Court: All right, it may go out.

By Mr. Parsons:

Q. You have been out of the Party for how long, sir?

A. Since the 17th of January, 1950.

The Court: Now, you mean?

Mr. Parsons: No, at that time.

The Witness: I misunderstood, your Honor.

The Court: Did you separate yourself from the
307 Party in December of 1950, is that it?

The Witness: No, January 17, 1950, since I am not in the Communist Party.

By Mr. Parsons:

Q. But you had been out of the Party while you were in the Services for how long?

A. That is correct.

The Court: Yes, he has already stated that.

By Mr. Parsons:

Q. When you got back into the Party, were you given any special instruction?

The Court: He has already covered that.

The Witness: I did cover that.

By Mr. Parsons:

Q. Were you given any text to study?

A. Yes.

Mr. Abt: I object, your Honor.

The Court: Any what?

Mr. Parsons: Texts.

The Court: Well, he told what he studied or what book he studied. Did you not?

The Witness: Your Honor, that part of my testimony became irrelevant because—

Mr. Parsons: It was stricken because I had not
308 asked the question correctly at that time.

The Court: All right.

By Mr. Parsons:

Q. Now will you tell us what texts you were assigned?

A. Yes.

Mr. Abt: I am sorry, I don't get the question, Mr. Parsons. What is the pending question?

Mr. Parsons: The texts he was given to study especially to refresh—

The Court: After he returned, what texts was he given to study. Go ahead.

309 By the Witness:

A. I was assigned to study the Duclos letter.

By Mr. Parsons:

Q. What is the Duclos letter, if you know?

A. The Duclos letter—Duclos article is a document—

Mr. Abt: If your Honor please, it is not in evidence. I suggest that any characterization or description of it be reserved until such time, if ever, as Mr. Parsons proposes to offer it.

Mr. Parsons: Sometimes it is necessary, your Honor, to produce a matter for introductory evidence to allow him to tell what it is.

The Court: I think he may testify what he was assigned to study.

Mr. Parsons: Thank you, your Honor.

Mr. Abt: Is he now going to testify or characterize the book he was assigned to study?

The Court: The name he may give.

Mr. Abt: He has already given the name, your
310 Honor.

The Court: That is what I say, but not any substance.

Mr. Abt: Thank you, your Honor, I misunderstood you.

Mr. Parsons: Incidentally, your Honor, this was a letter instead of a book.

The Court: Well, a letter then, irrespective of what it may be.

By Mr. Parsons:

Q. What did you find the Duclos letter in?

A. In the Daily Worker at that time.

Q. Do you remember the issue of the Daily Worker?

A. Well, it was I think one of the May issues of the Daily Worker, in one of the May issues of the Daily Worker in 1945.

Q. Did you find it in any other document, sir?

A. Yes.

Q. What was it?

A. I found it in, I think it is, September—well, I found it later on in the September, 1945 Political Affairs and also in a pamphlet, the title of which was The Struggle Against Revisionism.

Mr. Parsons: If it please the Court, recognizing
311 your Honor's instructions that we have all of our exhibits marked before coming into the court room session, there was one which we had failed to have marked ahead of time.

May we have leave to have it marked now, your Honor?

The Court: Yes, you may mark it.

Mr. Parsons: Will you kindly mark this Government's Exhibit No. 48 for identification?

(Whereupon the document was marked Government's Exhibit No. 48 for identification.)

By Mr. Parsons:

Q. Mr. Witness, I show you Government's Exhibit 48 marked for identification, and ask you if that is the document to which you refer in your last answer?

A. Yes, the article is in this pamphlet as one of the documents.

Q. You were in New York at this time, is that right?

A. That is correct.

312 Q. Did you have any discussions concerning this Duclos letter with any of the members of the National Committee?

The Court: Answer yes or no.

By the Witness:

A. Yes.

By Mr. Parsons:

Q. Did you have any discussions with the members of the Executive Committee of the Communist Party?

The Court: Answer yes or no.

By the Witness:

A. There is no Executive Committee.

The Court: He said there is no Executive Committee.

The Witness: National Committee or members of the National Committee?

By Mr. Parsons:

Q. Did you have any discussions with members of the National Board?

A. Well, some of them were members of the National Board, yes.

Q. Mr. Witness, have you attended any conventions of the Communist Party of the United States, national conventions?

313 A. Yes.

Q. Have you attended any state conventions of the Communist Party of the United States?

A. Yes.

Q. What national conventions have you attended?

A. I attended the national conventions of the Communist Party of the United States, in 1936, in 1938, in 1940, there were two conventions in 1940; 1942—

The Court: What month in 1942?

The Witness: In 1942, the convention was in July.
The Court: July?
The Witness: Yes.

By the Witness:

A. (Continuing): 1945 and 1948, national conventions. I attended the New York state conventions, in 1945 and 1948. I attended state conventions in West Virginia in the 1930's.

These were the conventions that I attended.

314 Q. Did you attend any convention after 1948?

A. No.

Q. Why not?

A. Because there was no convention between 1948 and the time I left the Communist Party.

Q. Has there been any convention since, if you know?

A. Oh, yes, there was a convention in 1950, December.

Q. Were you at the convention that began July 26, 1945?

A. That was one of them, yes.

Q. How did you participate in that convention, if you did?

A. I was a returned veteran and a fraternal delegate to this convention.

I participated in the Veterans' Commission of the 1945 convention, and in the convention as a whole; and I had some specific assignment by J. Peters who was in charge of Security of that convention, to carry out certain security measures for him.

Q. Tell us what those measures were.

Mr. Abt: Object, your Honor.

The Court: You may answer.

Mr. Parsons: Would you, please?

315 The Witness: I was assigned to see to it that no unauthorized person would get into the technical room of the convention where all the convention reports, speeches, et cetera, were transcribed and polished and editorialized so that only those that are authorized to go into this room should go in.

The Court: Did you say "authorized" or "unauthorized"?

The Witness: Only those authorized to go in; no unauthorized person should go in.

By Mr. Parsons:

Q. How long did this convention last, sir?

A. Well, this convention lasted, I think, three days. Three days.

Q. How many meetings were there during those three days?

A. Well, there were daily sessions. The convention opened up with the general assembly of the convention of about approximately close to a hundred delegates from all over the country.

Then the convention broke itself up into various commissions, and then the convention reassembled again and heard the reports of these various sub-committees of
316 the convention, passed on these reports, and then it carried out the mandate, elected a national committee, passed a resolution, and then everybody went home.

316-A Q. Now, this opening session, who was in charge of that session, if you know?

A. There was a permanent chairman of the convention.

Q. Who was that?

A. Irving Potash.

The Court: How do you spell the last name?

The Witness: P-o-t-a-s-h.

By Mr. Parsons:

Q. Were there delegates from Illinois at that convention, if you know?

A. Yes.

Q. What commissions had these separate meetings, sir?

Mr. Abt: If your Honor please—

The Court: I didn't get the question.

Mr. Parsons: He had testified that there were special meetings by commissions, I asked him what commission had these special meetings.

The Court: What commissions?

Mr. Parsons: Commissions, yes, your Honor. He testified that there was first an opening meeting and then there were special meetings.

The Court: You mean what was said there at the commission meetings?

317 Mr. Parsons: No, what commissions had meetings. There were during the second day—I understand the

convention met and on the first day there was a big opening session.

The Court: Yes.

Mr. Parsons: And on the second day the commissions had separate meetings. I believe that is what his testimony shows. I merely want to know what commissions there were, the names of them.

The Court: He may answer that.

Mr. Abt: If your Honor please, I would like to make an objection, if I may. I assume Mr. Parsons is still engaged in qualifying the witness.

Mr. Parsons: Yes, sir.

Mr. Abt: I have no objection to the substance of what he is saying. It seems to me we are spending an awful lot of time on detail that really has no relevancy to the matter here.

Mr. Parsons: I will be glad to make an offer of proof.

The Court: Well, how much longer do you expect 318 to go with the qualification?

Mr. Parsons: I think that we are down to 1945, we are much more than halfway through.

The Court: You should be.

Mr. Parsons: We started in 1929.

Mr. Abt: I am only interested in—

The Court: I think you could shorten that without going into details of what the commissions were. I don't see any purpose in that. As to what his activities were, that might be a different thing.

Mr. Parsons: I want him fully qualified for the purpose of using him as an expert, if I may.

The Court: Well, what commissions were there?

The Witness: There were the constitutional commission. There was a commission on—a labor commission, veterans commission, commission on—

The Court: I don't see any purpose in that. I don't see any reason to go into that matter.

Mr. Parsons: Thank you, your Honor.

319 Q. What sessions did you attend, sir?

A. The veterans commission and the regular convention.

Q. Why did you attend the veterans commission, sir?

A. Because I was assigned to it.

Q. If you know, who assigned you to that?

A. I don't recall the individuals who assigned me

to the commission, but I was assigned to the commission, and the commission was chaired by Bob Thompson, Robert Thompson.

Q. And you attended the last session, is that right?

A. Yes, I attended the whole convention.

The Court: Including the last session?

The Witness: That is correct, sir.

By Mr. Parsons:

Q. These reports that were made, what were the reports and who made them?

A. The reports—

Mr. Abt: Again I object, your Honor.

The Court: Generally, reports on what?

The Witness: Report on the heads of the various commissions, what transpired in the commissions, and
320 what decisions were made in the commissions.

The Court: All right.

The Witness: Such reports came back to the convention floor, like the report on a new constitution for the Communist Party, a report on various other aspects of activities of the Communist Party.

By Mr. Parsons:

Q. Were those reports in writing?

A. Those reports were oral, reports given to the convention, and later on they were reproduced as documents in various Party publications.

Mr. Parsons: May I ask your Honor's indulgence for just a moment?

The Court: Are you ready to proceed?

Mr. Parsons: Thank you, your Honor.

321 Q. Now, Mr. Witness, was this the regular convention of that year?

A. In 1945?

Q. Yes, sir.

A. It was a special convention.

Q. If you know, why was this special convention called?

Mr. Abt: I object, your Honor.

The Court: He may answer that.

By the Witness:

A. The special convention was called to repudiate the Communist Party position up to that time under the lead-

ership of Earl Browder and to repudiate his leadership, a special convention was called.

Mr. Abt: I move to strike that as the conclusion of the witness.

The Court: What?

Mr. Abt: I move to strike that as a conclusion of the witness.

Mr. Parsons: I believe that the witness by his prior testimony has so well qualified himself even thus far, that he knows—

The Court: He must have gained his knowledge
322 from someone else, from some document. As it is now it will have to go out now. Sustained.

Mr. O'Donnell: Your Honor, I might point out that the witness has testified that he was at the convention, he was there when these things took place.

The Court: It is his conclusion. He was there. He was asked what was the purpose of it, and he went on to explain the problem.

And incidentally, I will only hear one counsel on one side.

Mr. O'Donnell: Excuse me.

The Court: Unless there is some particular reason for the other one speaking.

By Mr. Parsons:

Q. Were there any resolutions passed at this convention?

A. Yes.

Q. What were the resolutions?

A. There was the main resolution passed entitled "The Present Situation and the Next Tasks", and the report
323 of William Z. Foster to the convention, and other sub-reports.

Q. Were those resolutions or reports placed in writing?

A. I beg your pardon?

Q. Were those—

A. Yes, yes, they appeared in the Political Affairs, the official theoretical organ of the Communist Party, and also in the pamphlet "Struggle Against Revisionism", that contains these basic documents.

Q. I show you Government's Exhibit 48, still marked for identification, and will ask you a question concerning it. In connection with the—

The Court: What is the name of that?

By Mr. Parsons:

Q. Which is entitled—

A. "On the Struggle Against Revisionism".

The Court: I didn't get it.

The Witness: "On the Struggle Against Revisionism."

By Mr. Parsons:

Q. These resolutions to which you refer, do you recognize whether or not they were published in that document?

324 A. Yes, it is. The present—

The Court: Well, the answer is "Yes"?

The Witness: Yes.

The Court: All right.

By Mr. Parsons:

Q. If you remember, was there any discussion at this convention relative to the texts that are used by these schools of Communism?

Mr. Abt: That calls for a yes or no answer, Judge.

The Court: I beg your pardon?

Mr. Abt: The witness should answer that merely yes or no.

The Court: Yes.

The Witness: I don't understand the question.

By Mr. Parsons:

Q. Was there any discussion during the course of this convention relative to the texts, the books to be used in connection with the Communist schools?

A. There was mention of going back to Marxism-Leninism.

Mr. Abt: I move to strike it, your Honor.

The Court: Yes, not responsive.

325 By Mr. Parsons:

Q. Was there any discussion relative to the constitution of the Communist Party?

A. Yes.

Q. Was there any session concerning the constitution of the Communist Party?

A. Yes.

Q. What session was that?

A. That was when John Williamson was—

Mr. Abt: Just a moment, your Honor. I submit we

shouldn't get any discussions or conversations at this time. The witness was asked to identify at what session of the convention the constitution was discussed.

Mr. Parsons: I believe he was identifying it in relationship to a person, not in relationship to a conversation.

Mr. Abt: Is it material at what convention it was discussed, what was discussed at what convention?

Mr. Parsons: I think it is material. We will find out.

The Court: Proceed.

The Court: Proceed.

326 By the Witness:

A. Well, after the Constitution Commission reported back to the floor of the Convention, it was towards the end of the Convention, that was the time when the Convention as a whole participated in the discussion on the resolution —on the constitution that was to be accepted as the Communist Party Constitution.

By Mr. Parsons:

Q. Was a new constitution accepted at that time?

A. Yes.

The Court: And when was this, now?

The Witness: Towards the end of the Convention, your Honor.

The Court: I know. What date, year?

The Witness: 1945, July.

By Mr. Parsons:

Q. That was after July 26, 1945, is that right?

A. Well, I don't recall. I know the Convention was in July, I know it was for three days or so; and towards the end of the Convention was when the constitution was adopted.

Q. Was that constitution ever placed in writing, sir?

A. Yes.

327 Q. By the way, did you have anything to do with the adoption of that constitution?

A. Well, I voted for it.

Q. How was the vote taken in that situation?

A. The vote was unanimous on the constitution. The vote was taken first section by section—

Mr. Abt: If your Honor please, again I don't care as to substance, but what is the materiality of all this?

The Court: I don't see it.
Mr. Parsons: I will proceed, your Honor.

By Mr. Parsons:

Q. You say it was placed in writing?
A. Yes.
Q. Let me show you Government Exhibit 44, marked for identification, which purports to be a small pamphlet entitled "The Constitution of the Communist Party of the United States", and ask you if you recognize that.
Mr. Abt: What number is that?
Mr. Parsons: I will get it for you in just a minute.

By the Witness:

A. Yes, this is a copy of the constitution that was
328 adopted at the 1945 National Convention of the Communist Party.
Mr. Abt: The number, please?
Mr. Parsons: 44.

By Mr. Parsons:

Q. Were there any changes made in the Communist Party of the United States as the result of that Convention?
A. Yes, both in—
Q. Would you tell us—
The Court: You have answered.

By Mr. Parsons:

Q. Would you tell us one?
Mr. Abt: I object, your Honor.
The Court: He may answer that.

By the Witness:

A. There were changes made as to organizational structure, and changes made as to leading personnel in the leadership of the Communist Party.

By Mr. Parsons:

Q. What changes were made—
A. And changes made as to adherence to basic ideological principles known as Marxism-Leninism.
Q. Changes made as to organizational structure,
329 what changes were made as to that?
A. Prior to that Convention there was a Political

Association, Communist Political Association. The 1945 Convention re-established the Communist Party.

Q. What changes were made?

A. As to personnel, and as to personnel Browder was removed from the general secretaryship and later on expelled from the Communist Party. And there were other removals from top leadership.

And the third aspect of change was going back to the basic principles of Marxism-Leninism.

Mr. Abt: I move to strike out the latter, your Honor.

The Court: Yes, strike it out.

Mr. Abt: May I ask you to ask the jury to disregard it?

The Court: I have told them several times, Mr. Abt, that anything I have stricken will be disregarded by them.

Mr. Abt: Thank you.

The Court: All during this trial.

Mr. Abt: Thank you, your Honor.

By Mr. Parsons:

Q. What change was made, if you know, as to basic
330 principles?

Mr. Abt: The witness just answered, your Honor.

Mr. Parsons: That part was stricken, because I had asked the question and the answer had gone beyond the question, counsel.

The Court: If it hasn't been answered, he may answer it.

By the Witness:

A. The Convention resolved to go back to the basic principles of Marxism-Leninism.

By Mr. Parsons:

Q. Was that a written resolve or resolution?

A. Yes, it is in the Constitution.

Mr. Abt: If your Honor please, if it is a written resolve or resolution I submit that the document is the best evidence.

The Court: The resolution is the best evidence.

Mr. Abt: And therefore the witness' answer should be stricken.

The Court: Strike it.

The jury may recess for a few moments.

(A short recess was taken.)

331 The Court: You may proceed.

By Mr. Parsons:

Q. Mr. Lautner, in 1945 you stated that you were with the Hungarian Bureau, is that right?

A. That is right.

Q. Was that after the convention?

A. After the convention.

Q. How long did you stay with that Bureau?

A. Until the end of 1945.

Q. And then what if anything did you do?

A. Well, I was sick for a while, and then I was assigned to the New York organization, and I was placed in charge of the Party organization in the building trades in New York State.

Q. What were your duties in that position?

A. To build up the Communist Party and the various crafts in the building trades industry, such as carpenters, painters, et cetera, and to carry out the Party line in these industries where we had Party membership.

Q. How long were you in that position?

A. Until the early part of 1947, somewhere around February or thereabouts in 1947.

Q. What was your next position, if any?

332 A. My next assignment was to build up the concentration region for the—

Q. What was that—

A. (Continuing) —for the New York State organization of the Party. That is transport and shipping. I was assigned to the Chelsea region of the Communist Party.

Q. What were your duties there?

A. To give leadership for the Party in that territory and also to take part in the reorganization of—

Q. Who assigned you, if you know, to that?

A. I got that assignment from the New York State secretariat in conjunction with the New York County organization of the Party.

Q. Now, what was your next assignment?

A. In May, 1947, I was assigned by the New York secretariat as head of the review commission of the Communist Party in New York State.

Q. What was the review commission, sir?

A. The review commission is the disciplinary arm of the Communist Party that functions to safeguard Party discipline, Party vigilance against enemy infiltration into

the ranks of the Communist Party, it reviews dis-
333 ciplinary cases that were processed in the lower or-
ganizations of the Communist Party, whether or not these cases were handled properly, and listened to appeals on these disciplinary cases.

This was in the main the function of the review commission.

Q. If you know, is there a review commission for each of the States, each State or District?

A. The big states, the larger districts of the Communist Party did have review commissions, yes.

Q. Do you know whether or not Illinois had a review commission?

A. I wouldn't know.

Q. Is there a national review commission?

A. Yes.

Q. Was your review commission under the national review commission?

A. I was a member of the national review commission from September, 1948, up to the time I left the Communist Party, and we were in the process of building review commissions in the various districts at that time.

334 By Mr. Parsons:

Q. You changed from the New York State to the National?

A. No, I was head of the New York State all along and in addition to that I was a member of the National Review Commission.

Q. Did you review cases of discipline in the National?

A. Yes.

The Court: Was that question, did you review cases of discipline?

Mr. Parsons: Yes, your Honor, did you review cases of discipline in the National commission.

By the Witness:

A. Yes, both in the National and in the State.

By Mr. Parsons:

Q. What difference would there be between the review of the State and the National commission?

A. Well, there is a chain of command in the Communist Party, and disciplinary cases are usually handled in the lower organization, on the branch level or the sectional

level, and decisions are made in these bodies of the Communist Party.

335 If the participants in these cases do not agree with the decisions rendered at these levels they appeal their cases to a higher body.

The State is the next highest to the National body, and these cases come up on appeal to the National on the State or sectional level.

Mr. Parsons: I see.

Mr. Abt: I move to strike out the "chain of command". You might as well say the "Chain of command in the Federal Court."

The Court: Strike it.

Mr. Parsons: I agree with counsel, and I would like to join in that.

By Mr. Parsons:

Q. It is an appeal decision, is it, similar to that in the courts?

A. Well, I don't know the appeal system in the courts.

Q. Thank you. Now then, did you have any subsequent duties in the Communist Party?

A. Yes.

Q. What was the next one?

A. In parts of 1946, 1947 and parts of 1948 I was also, in addition to the functions I mentioned here, teaching classes for the Communist Party.

336 Q. What classes? Where did you teach?

A. In New York City on the State and County level in New York City.

The Court: Was that in a building?

The Witness: In various buildings, your Honor, in various parts of the city.

The Court: When you mentioned the level I didn't know whether it was outside or inside.

The Witness: I mean the level of organization.

337 By Mr. Parsons:

Q. What classes did you teach?

A. I taught Marxism-Leninism; I taught Political Economy; I taught Party Organization or Party Structure and Party Discipline.

Q. It is difficult for me to pronounce that word "text", but what text did you use?

A. In the classes of Marxism-Leninism I used a text

that in the main I used in 1941 in the National Training School, such as the Little Lenin library series pamphlets; I used the "Struggle Against Revisionism" that contained a number of basic documents pertaining to the 1945 convention.

I used the Program of the C. I. and a number of other pamphlets.

On Political Economy I used pamphlets from the Little Lenin Library Series, and "Price and Profit."

Q. Were any of the documents which were marked Government's exhibits for identification here earlier this afternoon and which I showed you used by you in those classes?

A. Yes, the Little Lenin Library Series, the "Foundation of Leninism" and "Problems of Leninism."

338 Also I used "History of the Communist Party of the Soviet Union," C. P. S. U., and, as I stated before, the pamphlet "Struggle Against Revisionism" for the broad basic program pertaining to the Party.

Q. This was in 1947 and 1948?

A. 1947 and parts of 1948, that is correct.

Then on the Party structure I used a chart. Well, I was illustrating Party Discipline and Democratic Centralism and the "Structure of the Communist Party."

Q. What was your next assignment or what was another one if you had one?

The Court: I suggest you ask the question. Do you know if there were duties in addition to that other than what he had been in before that?

Mr. Parsons: Thank you, your Honor.

By Mr. Parsons:

Q. Were there any different assignments than those to which you have already testified?

A. Oh, yes. I had—

Q. What were they?

A. After 1948 I was assigned to prepare the New 339 York State Communist Party to go underground.

Mr. Abt: I object, your Honor.

The Court: Maybe I didn't hear the answer.

Mr. Abt: He said he was preparing the New York Party to go underground.

Mr. Parsons: He said he was assigned to prepare it.

Mr. Abt: I object to that.

The Court: Sustained.

340 By Mr. Parsons:

Q. Did you have any other title positions?

A. I was a member or head of the New York State Review Commission and a member of the National Review Commission at the time I left the Communist Party.

Q. Did you receive any other assignments before the time you left the Communist Party to which you have not testified?

A. I did. I had an assignment.

Q. What was that, sir?

A. I was assigned to prepare the New York State organization of the Communist Party to go underground.

Mr. Abt: If your Honor please,—

The Court: Strike it.

Mr. Abt: You struck that before.

The Court: That is, strike after "to go", but the rest of it may stand, the fore part.

Mr. Parsons: The characterization.

The Court: Yes.

By Mr. Parsons:

Q. What were your duties in this assignment, sir?

Mr. Abt: I object, if your Honor please. There
341 was a conversation, and if the conversation is otherwise admissible—

Mr. Parsons: No.

Mr. Abt: May I finish?

Mr. Parsons: I am so sorry.

Mr. Abt: If there is a conversation and that conversation is admissible in it then he got some instructions and then he can ask the conversation, and if he did something as a result of that, then that may go in, but I submit we have got to proceed here in an orderly fashion.

The Court: But this is a question of one of his duties.

Mr. Parsons: Yes.

The Court: He may testify what his duties were.

By Mr. Parsons:

Q. Will you tell us your duties on that assignment?

A. Yes. One of my duties was to supervise that tree system as being built up.

Q. What is that word you used?

A. A tree system of organization parallel with the existing Communist Party organization being built up.

I was put in responsibility to see to it that these
342 three organizations or trees where we had seven levels, that they were supplied with the various types of printing machinery from the high speed photo equipment all the way down to the hand printing machines.

I was to build up a commmunication system for this organization.

I was also to build up a liaison system of various types of places, meeting places for an indefinite period of time where the Party leaders can stay, where the Party leaders could stay for a specific period of time, or where the Party leaders can meet.

I was also assigned to establish a whole chain of drop places where the Party leaders' literature can be dropped.

Q. What was that?

A. Where the Party literature can be dropped.

Q. I think you are too close to the microphone, and I didn't get the word that modified "places." What was that?

A. Places where Party literature—first, places where the Party leaders can stay for an indefinite period of time as a protective place.

343 Mr. Abt: If your Honor please,—

The Court: Wait a minute.

Mr. Abt: Before the witness continues, I don't know the purpose for which this particular testimony is being offered. I submit if it is to qualify the witness he has already gone entirely too far, into entirely too much.

The Court: Wait.

Mr. Parsons: Your Honor—

The Court: Wait.

Mr. Abt: If it is offered for any other purpose at this stage it cannot be binding against Mr. Lightfoot, because this is in connection with something else, and it has no connection whatever with Mr. Lightfoot.

344 I make that suggestion because obviously the witness is asked to answer something here and if he answers it it may be something that is very prejudicial.

Mr. Parsons: I would like the jury and counsel and the Court to know the broad extent of the witness's connection with the Party in the United States.

We intend to ask this witness questions concerning the advocacy and teachings of the Communist Party, and we intend to qualify him as fully as possible, because we

believe he is a man that knows what those advocacies and teachings are.

I don't intend to go too far, because I realize time is pursuing us, but I do wish to qualify this witness.

Mr. Abt: I object.

The Court: I think you have qualified him so far.

Mr. Abt: I think I shall ask that the witness's answer be stricken.

Mr. Parsons: I don't think it is objectionable, but
345 I do think if we are pushing it too far I would like to go on with something else.

By Mr. Parsons:

Q. Now, Mr. Witness, was there any other position to which you have not testified which you held before you left the Party?

A. No, I can't recall any.

Q. When did you leave the Communist Party?

A. On the 17th of January, 1950.

Q. Under what circumstances did you leave the Communist Party, sir? Did you voluntarily walk out, or under what circumstances was it?

A. No. I was sent down on an assignment to Cleveland, Ohio.

Mr. Abt: If your Honor please, may we have a bench discussion?

The Court: Yes.

(Whereupon the following proceedings were had in open court before the bench in the presence but outside of the hearing of the jury.)

Mr. Abt: Your Honor has read, I presume, the de-
346 cision of the Court of Appeals in the Flynn case.

You will recall the testimony upon which this witness is about to embark. There was some instance that occurred somewhere in a cellar in Cleveland where he was accused of being a spy for the FBI, and as a result of which he said he was threatened by people who were in the cellar, and eventually expelled from the organization.

I submit now in a conspiracy case, while it might be admissible in some cases, it certainly would not be admissible here before this Court in a case of this type.

347 Mr. Abt: There is no connection whatever between that episode and Mr. Lightfoot.

Mr. Parsons: I believe you are right.

I will cite the opinion. It is a very good opinion, and

there has been a question which came up to me, came in my mind, as to whether it would be admissible in this case, realizing the difference between the cases.

I think the cases are very clear that it would have been admissible even though this were not a conspiracy, although I don't want to read this aloud now, your Honor, not the case itself.

Mr. Abt: He has read it.

The Court: I am familiar with it too.

Mr. Parsons: We have no doubt as to the relevancy of the testimony.

It tended to prove the contention that the Party was attempting the overthrow of the Government. It was admissible for that purpose. This is 216 Fed. 2nd, page
348 354: "Lautner's expulsion tended to prove two theses advanced by the prosecution in support of its contention that an objective of the Communist Party was the forcible overthrow of the Government: first, that the Party functioned not as an ordinary political party but in a covert, deceptive, violent, and highly disciplined manner, such as might be expected of a revolutionary organization; and second, that although the provisions of the Party Constitution seemed to belie a revoluntary purpose, the Consitution was not in practice faithfully observed—the Government's so-called 'Aesopian' theory. That threats of force were used against Lautner with the evidence purpose of wrenching from him a confession of collaboration with federal intelligence authorities, k t he was forced to sign a paper which would make it falsely appear that his expulsion had been after a fair hearing, and that suggestions were made that he might be done away with altogether, all tended to prove the Government's first thesis."

349 "The Lautner testimony was offered as but one of several elements of evidence tending to show the Party's methods of operation and the misleading nature of the Party constitution. If all these elements, taken together, permit the inference of the Government's theses, then the individual elements are not to be barred as irrelevant."

Then it goes over to this:

"This was ample to make the testimony admissible against all the defendants on trial. Furthermore, to the extent that the episode bore upon the objectives and methods of operation of the Communist Party we think

that it was unnecesary for the Government to show that any of the defendants knew of or had authorized the specific actions involved. Because of their official positions in the Party, the defendants are presumed to have endorsed the Party's objectives and methods. In its attempt to bring out the nature of these objectives and methods the Government should not be limited to showing ac-
350 tions known to or authorized by the defendants, any more than the defendants should be similarly limited in introducing evidence of contrary objectives and methods."

It does take up this question. Further on that is taken up, between the two quotes which I have read, and it was there that the question was raised.

It is admissible as binding upon the co-defendants, and that is the basis of admissibility.

The question of whether or not it would seem to inflame the jury, on that point the Court went on to state there was ample provision made by the Judge in his instructions.

Mr. Abt: If your Honor is in doubt about it I would like to be heard at some length, and I think a hearing should be held outside the presence or hearing of the jury, because it is very important.

The Court: This is what is in my mind: Suppose you asked this witness why he left the Party.

351 Mr. Parsons: Yes?

The Court: And the witness should state, I left them because I found out the purpose of the Party was for the overthrow of the Government?

Mr. Abt: I am afraid you are taking it to loud, your Honor, that you are talking to loudly.

The Court: All right.

Mr. Abt: That is an element, of course.

The Court: And you are allowing him to testify to that.

Mr. Abt: Well, I don't think he should.

Mr. Parsons: That was not the reason he left, of course, your Honor.

The Court: What do you say was the reason?

Mr. Parsons: He was expelled, he was thrown out.

The Court: Wouldn't that end it?

Mr. Parsons: I think the circumstances under which he was expelled were material under the ruling in the Flynn case.

The Court: Why was he expelled?

Mr. Parsons: Because the Party itself operates on
352 just that basis, just that kind of way, which we allege is the nature of that kind of organization.

We have to prove these things.

Mr. Abt: The issue here is as to this defendant.

Mr. Parsons: We have to prove these things by just this kind of evidence.

This is a new type of case, I suggest, your Honor, and that since this is the first of these cases in the country we have to sort of feel for guides as to something to do, how to proceed.

When we have decisions in other Smith Act cases, since those decisions are applicable under any language to the case, then we think they are about the only decisions upon which we could rely.

The Court: Have you some other subject matter you can take up with this witness now? Then I could give you a hearing out of the presence of the jury. We might as well meet that squarely now.

Mr. Abt: It is the essence of the case.

353 Mr. Parsons: I would like to have your Honor discuss it in the light of that decision.

The Court: Mr. Abt said he would like to be heard on it. I can suggest that you take him back for about ten minutes longer, but beyond that time I think you would have to wait until he is completely out of the way.

You had better go ahead as far as you can, but on that point if we have any time left before you reach the cross-examination we could go into it.

Mr. Abt: I submit Mr. Parsons has not finished with the witness, by any manner of means. There is nothing to cross-examine on.

Mr. Parsons: After we have him fully qualified we want to go back on the aims based on his knowledge and experience.

The Court: Go ahead on that now, but on this question don't go any farther with that.

Mr. Parsons: All right.

354 Mr. Lautner, after you left the Communist Party, that was when, did you say?

A. On the 17th of January, 1950.

Q. What then did you do?

A. Well, I was out of the Communist Party, I was in a very difficult personal condition as to my own person-

Mr. Abt: Your Honor, object. He says he was in a very difficult personal position. The question was what did he do.

The Court: Yes, objection sustained. What did you do, go to work somewhere else?

The Witness: No, I went fishing.

By Mr. Parsons:

Q. After fishing, then what did you do?

A. Well, I came to the realization—

The Court: No, what did you do?

The Witness: Well, I didn't do anything. I was out of the Communist Party. I made an appeal. I appealed to the National Review Commission to review my case. They refused—I mean, they don't even refuse, I never heard from them.

The Court: Well, though, what work, if any, did
355 you do after you left the Communist Party?

The Witness: Well, I was unemployed, and then—then I got employment in January, well, towards the end of 1950.

Mr. Parsons: May it please the Court, may I have just a moment?

Q. By the way, Mr. Lautner—

The Court: Go ahead.

Mr. Parsons: Thank you, your Honor.

Q. You said you attended the 1948 convention, is that right?

A. That is correct.

Q. Where was that one held?

A. The 1948 convention was held in New York City, in Riverside Plaza, that is around 73rd Street, near Riverside Drive in New York City.

Q. When was that held?

A. That convention was in the summer of 1948.

Q. You stated this morning that you knew Mr. Lightfoot, was he at that convention, if you know?

A. In the 1948 convention, yes, he was there.

Q. Did you see him there?

A. Yes, I checked him in.

356 Q. What do you mean when you say you "checked him in"?

A. Well, I was in charge of Security in that convention, and we had set up a security system where we had

to check in delegates into each session, and I was in charge of that.

Mr. Abt: I would like to move to strike the characterization "security", your Honor.

The Court: Yes, strike that.

Mr. Parsons: That is what it was.

Mr. Abt: He said he was checking in delegates. That happens at any convention.

Mr. Parsons: Perhaps at this convention it is real security.

The Court: No, that may go out as to what it was for.

By Mr. Parsons:

Q. How long did this convention last?

A. It lasted about three days.

Q. Was any change made in the Communist Party of the United States as a result of this convention, if you know?

A. There was, yes, a reduction of national leadership in the composition of the National Committee, and
357 some little changes in the constitution that was adopted in 1945.

Q. Was this change in the constitution ever placed in writing?

A. Yes.

Q. Would you recognize it if you were to see it?

A. Yes.

Q. I show you Government's Exhibit 45 for identification, and ask you if that is the writing to which you refer?

A. Yes, this is a copy of the constitution that was adopted at the 1948 convention of the Communist Party.

Mr. Abt: What is the number again?

Mr. Parsons: That is No. 45.

Q. Now coming forward in time from the 1948 convention and skipping for the time being the period of your leaving the Communist Party, after you were out and not in the Communist Party any longer, if any, what job next did you take?

A. I became a consultant for the Department of Justice.

Q. When was that, sir?

A. Around January, 1951.

358 Q. What were the circumstances of your taking this job?

A. I wrote a letter to the Department of Justice in

September, 1950, in which I stated who I was and I told them in the letter I came to the realization that I was in a—I made a grave mistake in my life and offered my unqualified—

Mr. Abt: If your Honor please, I object and move it be stricken.

The Court: Not within the letter, yes.

By Mr. Parsons:

Q. After you wrote the letter, sir, what happened, if anything?

A. I was contacted by the Federal Bureau of Investigation, and was put in touch with the Department of Justice later.

Q. Now this job that you have with the Department of Justice, what are your duties in that job?

A. My duties are to participate in conferences, making suggestions, to consult with various officials of the Department and the Federal Bureau of Investigation, and also to appear as a witness for the Government in some of the proceedings that the Government instituted in relation to the Communist Party, Communist Party
359 activities, and Communist Party members.

Q. And in your position do you have any contacts with the Communist Party?

A. With the Communist Party?

Q. Yes, sir.

A. No. The only contacts I have with the Communist Party is in a court room. I have no contact whatsoever with any individuals of the Communist Party.

Q. Do you have any source of information as to the Communist Party?

A. Well, I studied their periodicals, their newspapers, their resolutions, whatever they adopt and whatever line they project, I make a study of that.

Q. You say that you have testified in other proceedings. Have you testified in other Smith Act cases, sir?

A. Yes, sir.

Q. Have you testified in those cases as an expert witness?

A. Yes, except in one case.

Q. What case was that?

A. That was the New York case.

360 Q. Now would you—

A. (Continuing.) New York City.

Q. Would you tell us some of the cases you have testified in as an expert witness?

Mr. Abt: Object, your Honor.

The Court: I don't see how it is material what cases he has testified in.

Mr. Parsons: May it please the Court, may we approach the Court on this question, just for a moment?

I may be mistaken in procedure as to how to qualify an expert witness, but the old personal injuries, and I suppose experts in any field, are very much the same, one of the common and every-day questions of an expert is whatever cases you have testified as an expert in, in demonstrating your experience in the field.

I only offer it for that purpose, not of course to put into evidence anything about those other cases. I shan't ask him to go into them at all.

Mr. Abt: It seems to me, your Honor, that the witness has already testified he is in the employ of the
361 Department of Justice and it is his duty—

Mr. Parsons: Perhaps counsel will concede that he is qualified to testify then as to the aims and purposes, the aims and purposes of the Communist Party?

The Court: Well, that is bearing on the question I must finally determine, so I think I will let that testimony in as to what cases he has testified in.

Mr. Parsons: Incidentally, I am just about to the point where I won't be able to go on until your Honor has had a full opportunity to review this issue.

The Court: Well, as far as you can, go then.

Mr. Parsons: Thank you, your Honor.

By Mr. Parsons:

Q. Now will you, Mr. Witness, tell us the Smith Act cases in which you have testified, saying nothing about the cases or parties involved, just the name of the cases.

A. Well, the cases were where opinion questions were asked.

Mr. Abt: If your Honor please,—

362 The Court: Now, John Jones case, Will Smith case.

The Witness: Oh, yes.

Well, the Schneidman case in California—

By Mr. Parsons:

Q. When was that?

A. 1952.

Q. Go ahead.

A. And then there was the Baltimore case, Smith Act case that was, in 1950.

Then the New York—well, I was a witness in the New York case. Then we had a case out in Honolulu, a Smith Act case.

We had one in Seattle, one in St. Louis—

Q. Could you give us the names of those cases, sir?

A. Well, the Honolulu case was the Fuji Moto case; the Seattle case was the Hoff case; the case in Detroit was the Wellman case; the case in St. Louis was the Forest case, Setner Forest case.

The Baltimore case was the Meyer case.

Q. Have you appeared before any other judicial or administrative tribunals as an expert witness on af-
363 fairs of the Communist Party?

A. Well, yes.

Mr. Abt: If your Honor please, before we proceed to other matters, in view of the fact this proceeding is also a proceeding or might be called a proceeding under the Smith Act, I wonder if your Honor would advise the jury this proceeding is under a different section of the Smith Act and therefore involves different issues of fact, and of course different parties, than in any of the other cases?

The Court: Well, all of the cases you are testifying to are separate and apart from this case, isn't that right?

Mr. Parsons: We concede that, your Honor, it may be stipulated.

364 Mr. Abt: And involves different sections of the Smith Act.

Mr. Parsons: Different defendants, different parties, and they all involve the aims and objectives of the Communist Party.

Mr. Abt: I won't agree to that, Mr. Parsons.

The Court: O. K.

By Mr. Parsons:

Q. Have you testified before any other tribunals, judicial or administrative?

A. Yes.

Q. Relative to the aims and objectives of the Communist Party, as an expert witness?

A. Yes.

Q. What others, sir?

A. We had a Board of Regency case in New York state.

Q. That is the only other?

A. And numerous "front" cases, so-called.

Q. Approximately how many?

A. About five or six of them.

Q. What do you mean by "front," sir?

365 A. Designated by the—so designated by the Attorney General, Communist front cases.

Q. Before whom are those cases?

A. Subversive Activities Control Board cases.

Q. That is in Washington, D. C.?

A. That is correct.

Mr. Abt: I move to strike out the characterization "so designated by the Attorney General," your Honor.

The Court: Right.

Mr. Parsons: Your Honor, we have reached that point where we—

The Court: Beg your pardon?

Mr. Parsons: We have reached that point, your Honor, where I believe it would be impossible—

The Court: Until that question is decided, you cannot go forward?

Mr. Parsons: We feel we need to have that in before we go ahead.

The Court: The jury will remember their instructions and, Mr. Marshal, adjourn the court until 10:00 366 o'clock tomorrow morning.

(Whereupon an adjournment was taken in the above-entitled cause until Friday, January 14, 1955, at the hour of 10:00 o'clock a. m.)

367 Before Hon. Philip L. Sullivan, Judge, and a Jury.

Friday, January 14, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Appearances:

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, By: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Esq., Special Assistant to the Attorney General, on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

368 (The following proceedings were had in open court, outside the presence and hearing of the jury:)

The Court: For your convenience, gentlemen, I will comply with your request that we only go forward in this case until noon.

Mr. Abt: Thank you, sir.

The Court: It will give me an opportunity to take care of some other matters.

Mr. Abt: Your Honor, I would like to suggest, if we are going to start, as I assume we are, with argument on the matter of last night, that the argument take place in chambers, for what seems to me are obvious reasons.

The Court: All right. You may come in chambers.

(The following proceedings were had in chambers, outside of the hearing and presence of the jury:)

Mr. Abt: Does your Honor want to hear from me first?

The Court: Yes.

Mr. Abt: First let me say, your Honor, that I 369 certainly don't want to bang at an open door, but if your Honor has any real question as to the admissibility of the evidence I would like to be heard fully on it.

The Court: Well, I read and re-read and re-read the

Flynn case (216 F. 2d—No. 4, 354) before, yesterday, and last night I read it.

Mr. Abt: Let me say this, your Honor, and if I should go on at too great length I will invite you to stop me. I will try not to be too lengthy.

It seems to me there are two things, first, that the immediate problem we are faced with is of great importance in the case; and, second, I now would anticipate, both from the character of Lautner's examination up to this point and from some comments that Mr. Parsons made yesterday, that apart from this immediate question we are going to meet similar questions of the same character in the course of Lautner's testimony. But I want to address myself now to this immediate question only.

I start with the proposition, your Honor, that with membership admitted here the essential issue in this case boils down to the question as to whether or not Lightfoot knew the Communist Party as a society of persons who teach and advocate.

370 It seems to me that if there is one proposition that is more firmly imbedded in our law than any other it is the proposition that no man may be held criminally liable except for his own acts or statements or declarations or for the acts or declarations of others which he has either authorized or ratified. From that rule of substantive law there flows also the rule of evidence that evidence of acts or declarations of third persons are not admissible unless the defendant participated in them, authorized them or ratified them. And proof of participation, authorization or ratification is required except in the case of the conspiracy exception, where the existence of the conspiracy is deemed to be authorization amongst the co-conspirators. That is all hornbook law, your Honor.

Here, with reference to the incident which Lautner is now asked to testify about, I think it is conceded, first, that the witness had no knowledge of the incident; second, that he didn't authorize what took place in that cellar; third, that he didn't ratify it and, as I say, that he didn't even have knowledge of it. At least, no evidence of any of those things has yet been produced as a foundation.

In the absence of any of those elements, again, it 371 seems to me a fundamental principle that is almost hornbook, your Honor, that in a trial which is not a conspiracy trial the evidence is inadmissible.

I come now to Judge Harlan's opinion. It seems to me

perfectly clear that there is nothing in that opinion, indeed I couldn't conceive that there could be, that would qualify that fundamental principle of law that I have tried to restate here. Judge Harlan's discussion of this evidence is divided in two parts, like any discussion of an evidentiary question.

First he discusses the relevancy of the testimony, and he decides that it was relevant to the issues in that case. I think, your Honor, that there are distinctions between that case and this case on the question of relevance, but I don't propose to argue those now, because I don't think that is the key issue here. And I would assume, for the purpose of this argument, that the Lautner testimony would be relevant to some issues in this case.

However, the specific problem isn't relevance, it is competence. And competence is the second question that Judge Harlan deals with.

372 And, by the way, all of the quotations from the case which Mr. Parsons read to you at the bench yesterday dealt not with the latter question of competence but with the question of relevance.

On the question of competence, why does Judge Harlan say that this evidence was competent in the Flynn case?

You start, your Honor, with the proposition that the Flynn case was a conspiracy case and must be read and judged as a conspiracy case, and the fact of the matter is that Judge Harlan predicates the competence of the evidence primarily on conspiracy law.

He points out that one of the co-conspirators was present in that cellar and that two or three of the defendants were connected in one way or another with the incident, either before it occurred or after it occurred. He says, applying conspiracy principles, that since the evidence was connected to one or more of the co-conspirators it is admissible against all of them, because it was an act performed in furtherance of the conspiracy.

Obviously, that rationale for the admissibility of evidence in the Flynn case has no application here, because this
373 is not a prosecution for conspiracy, and therefore you cannot apply the co-conspirator rule here.

374 Judge Harlan does, however, say one further thing, as I am sure your Honor recalls. He says that in any case it would be presumed or could be presumed from the character of the offices held by the defendants in the Flynn

case that they had knowledge of the methods and objectives of the organization, and on that theory, that this evidence was admissible, because they were presumed to have knowledge of it.

In the first place, your Honor, it seems to me that that statement is dictum, because the conspiracy principle on which Judge Harlan supports the admissibility of the evidence was ample to sustain it without resort to this other principle; secondly, with all due respect to Judge Harlan, I find it very difficult to agree with that proposition.

But assuming it is sound in the Flynn case, I think it is perfectly apparent that it does not and cannot have any application to this case. In the first place, the defendants in the Flynn case were all national officers or national officials of the Communist Party. They held positions which would make it possible or did make it possible, at least in Judge Harlan's opinion, to indulge in that kind
375 of a presumption.

Here the evidence does not show that Lightfoot held any national office, and as a matter of fact, although this does not yet appear in the record, I can state it to your Honor, as a matter of fact in that period he did not hold any national office, although as the evidence shows here it is that he held certain state offices and held them as late as up to 1942, I believe. I don't think there is any evidence here yet as to—

Mr. O'Donnell: 1947.

Mr. Abt: Herron said something about 1947. It is immaterial for my purpose, I don't think he specified what office he held. In any case, there is no evidence here that the man held any national office. So the kind of presumption that Judge Harlan indulged in as a factual matter isn't available here.

However, I think there is a much more fundamental reason, your Honor, why such a presumption cannot be indulged in here. As I said, the issue here, and really the sole issue here now is the question of the witness' knowledge of the objectives of the organization and its methods. Now, if you could indulge in a presumption that he knew the objectives and the methods of the organization
376 from the fact that he was a member and he held local office in the organization, we would have no presumption of innocence here; we would have, on the contrary, a presumption of guilt, and the provision of the statute that

a man must be a member knowing the objectives of the organization or the advocacy of its members would be ineffective. We would be presuming a man's guilt from the mere fact that he was a member and was an officer.

Not only would such a presumption destroy the presumption of innocence, your Honor, but it would be clearly contrary to the provision of Section 4-F of the McCarron Act.

I don't want to repeat what we said in our motion to dismiss at all, but we are up against that point right now, because if you could indulge in such a presumption from the fact that a man was an officer of the organization, then the fact of his being an officer of the organization would ipso facto make him guilty of a crime. That is exactly what 4-F says you cannot do.

For all of those reasons it seems to me that the second ground for Judge Harlan's decision, which I repeat in my judgment is dictum, now is clearly inapplicable here.

377 I only want to say one thing further, your Honor, and that is in terms of the handling of this question by district courts other than by Judge Dimock. You will note, as I am sure you recall, your Honor, there was a reference to that—

The Court: Where were those cases?

378 Mr. Abt: To my recollection, your Honor, and I think it is correct, in six cases the evidence was excluded either in whole or in part. Judge Chestnut excluded it in Baltimore. Judge Mathis excluded it in Los Angeles. It was excluded, I am quite certain it was in Hawaii, and I am quite certain in Seattle and in Philadelphia.

Now, even in Detroit, and Mr. O'Donnell was present in the Detroit case and knows this, your Honor, in Detroit—and I think this is very significant, in Detroit one of the co-defendants was a man by the name of Wellman. Wellman is a man whom Lautner identifies as having been in that cellar and duly participating in the incident. Notwithstanding that fact, your Honor, and the Detroit case like the others was a conspiracy case, but a conspiracy case in which one of the defendants himself was there, notwithstanding all that, Judge Piccard allowed only the most skeletal kind of a description of the incident to go in. He eliminated and would not permit any of the inflammatory stuff. All he allowed to go in was the fact that an incident occurred in the cellar and that as a result of that incident Wellman was subsequently expelled.

379 Frankly, I don't see the occasion in this case for allowing evidence of this character here, and even if it were of a neutral character, your Honor. But we have got more than that. We have got the fact that it is of a highly inflammatory character.

The Court: Have you finished?

Mr. Abt: Yes, your Honor.

The Court: Mr. Parsons or Mr. O'Donnell.

Mr. O'Donnell: Could we just take—

Mr. Parsons: May we confer just a moment about our reply?

Mr. Abt: I might say, your Honor, I have a lot of cases and a lot of law, but I don't see the point at this time of citing them.

Mr. Parsons: May it please the Court, I am impressed by another hornbook rule, that matters which are admissible into evidence for more than one purpose, when found in any particular case to be admissible for one purpose and not competent for another, are not rendered inadmissible for the purpose for which they have been found admissible just because they are not admissible for another.

380 We have here a witness on the witness stand whom we intend to offer as an expert witness, to give opinion evidence. The question that was asked over which we are making a decision now—your Honor is to make the decision, is a question which was a part of the qualifying examination of that witness, merely for the purpose of showing the full competency of that witness to testify to opinion questions to follow. The full extent of his experience is important, as it has been set out as important in the Flynn decision. I think the fact that it is admissible for that purpose and totally inadmissible for the purpose of showing the guilt or the innocence of the defendant himself, totally inadmissible for the purpose of showing any connection between the defendant and the experiences of the witness, would not render it inadmissible for the purpose of qualifying the witness himself as an expert witness.

We have a subsequent hornbook rule which looks to the protection of the jury from inflammatory situations such as perhaps would come out of this testimony—

The Court: And what is that rule?

Mr. Parsons: —through the instructions of the 381 Court.

The rule is, to instruct the jury to disregard it as

having any bearing upon the guilt or the innocence directly of the defendant.

We have conferred, Mr. O'Donnell and I, and we don't want our record hurt by any decision that would allow us to go ahead to the extent that there would be a possibility that given even the correct instruction the jury might exceed that instruction and harm the defendant, by having heard all of this testimony. To that end we would now be willing to reduce the testimony as to those facts to the bare fact and keep out of the evidence—

The Court: To the bare fact of what?

Mr. Parsons: Of the nature of his expulsion, and keep out of the testimony the details that are inflammatory.

The Court: Just what do you mean by that? What would you expect to offer?

Mr. Parsons: I would expect to offer his proof that he was expelled from the Party without hearing, without appeal, that he was expelled in a manner that is contrary to the provisions of the Constitution of the Party, and in
382 a manner that involved some physical intimidation to get him to sign an admission of a thing which he did not do. It is general, but we don't want to have to go into that problem.

We see counsel's point. There is a difference between these cases. I believe that the Flynn case—I don't want to argue the Flynn case because your Honor has read it. I read it again myself after I cited it to your Honor. I am convinced, I am convinced that the Flynn case, with its having been considered not only by Judge Harlan but by Judge Chase and Judge Hincks of that Second Circuit, that the Flynn case is adequate authority upon which your Honor might rule that the witness may proceed into every detail of that situation. We don't press at this moment that that rule be made.

The Court: Have you finished?

Mr. Parsons: Yes, your Honor.

The Court: It seems to me that if this testimony is competent, that is, as to the details of it, that he was beaten and slugged, whatever it was—

Mr. Parsons: That is right.

The Court: —and guns used, that it would not be
383 admissible. That is the most inflammatory bit of evidence, I take it, that could be produced, and you cannot erase it by an instruction. That is all there is to it. You cannot do it, irrespective of how hard you may try.

However, what do you say about the admissibility of the evidence that he was expelled, and expelled contrary to the Constitution? The Constitution, I think, provides that he should have a hearing.

Mr. Abt: That is right.

Mr. Parsons: That is right, your Honor.

Mr. Abt: I would say that that is also inadmissible, your Honor. Now I think we are getting into the character of question which I assume we are going to reach when we get into Lautner's testimony.

Let me explain that a minute, if I may.

As I gather now, after hearing the examination yesterday and the qualifying examination of Lautner, it is Mr. Parsons' purpose to have him testify as an expert witness with reference to the aims and ends of the Communist Party. Am I right, Mr. Parsons?

Mr. Parsons: That is right.

Mr. Abt: To give testimony as to his experiences in the Party which Mr. Parsons says are relevant to
384 those ends and aims, testimony which Mr. Parsons will not connect up with the defendant, and by "connect up with the defendant" I mean as we lawyers normally talk about it, your Honor, that he does not expect to show that Lightfoot had knowledge of the particular incident which Lautner will testify about, that he ratified it, participated in it or authorized it. Right, Mr. Parsons? Isn't that in general correct?

Mr. O'Donnell: I don't think it is.

Mr. Parsons: No.

Mr. Abt: Let me not anticipate, then.

Mr. Parsons: Yes.

Mr. Abt: Let me just address myself to this proposition. Let us assume, Judge—

Mr. Parsons: May I accept one suggestion that you made as being true?

Mr. Abt: Yes.

Mr. Parsons: We do expect to offer the testimony of this man as to opinions.

The Court: As to what?

Mr. Parsons: Opinions, your Honor.

Mr. Abt: Let us meet that when we come to it, Judge.

Mr. Parsons: We won't go deeply into his affairs.

385 Mr. Abt: Maybe I am trying to anticipate too much here.

Let us confine ourselves to your proposition. That is, query, would it be competent for Lautner to testify here merely that he was expelled from the organization without a hearing, as provided for in the Constitution?

I submit, your Honor, for all of the reasons I have argued previously, that unless you can show—the Government can show, that is, it is not your job, of course—unless the Government can show that at a minimum Lightfoot had knowledge of that fact, the evidence is not admissible against Lightfoot.

The whole question here, your Honor, the one issue that we are trying here, as I see it, is, did Lightfoot know that the Communist Party was a society of persons who teach and advocate. Now, you cannot prove his knowledge, your Honor, by facts of which he did not have knowledge. If the violation of the Constitution, or the alleged violation of the Constitution here has some relevancy to the question of the advocacy of the members of the society, and that is the only basis on which it seems to me that it is relevant at
386 all, your Honor, if it is relevant to that question, then it is competent only if it can be connected with Lightfoot, only if it is within his knowledge, because this is not a conspiracy case. This is a trial of an individual. The co-conspirator rule is not applicable, and by any general principles of criminal law the only evidence that is admissible against a man is evidence of acts or declarations that he authorized, ratified or at least knew about.

I gather from Mr. Parsons' argument here, your Honor, that the only basis on which he is now claiming that the evidence is competent is as part of Lautner's qualifications as an expert. We may have some quarrel later on as to whether the man is or is not an expert.

387 But surely, whether he was expelled with due process or without due process, has no bearing on whether the man is an expert or not.

I simply don't see, you allowed, your Honor, and I didn't press it, Mr. Parsons to qualify the man for three-quarters of a day yesterday, telling of all of the offices he held and his jobs, et cetera, in the organization—I don't see what this little episode or big episode, call it what you will, your Honor, would add to his qualifications that he has given at excruciating length from the stand, I simply don't see that.

Mr. Parsons: If it please the Court, we have an indict-

ment to prove—it has charges in it set out in two paragraphs.

The first of those paragraphs is a charge against the Communist Party of the United States that the Communist Party of the United States of America has at all times been a society group and assembly of persons who teach and advocate the destruction and overthrow of the Government of the United States by force and violence.

We have got to prove that.

The Court: That is right.

Mr. Parsons: We should be allowed to put in our
388 proof of that.

Now every iota of proof that goes to prove that issue need not have its subsequent connection to the defendant. That can be proved independently of any evidence connecting the defendant.

The testimony should be admitted before the jury, evidence, documents, to prove that fact, without their connecting the defendant whatsoever.

We still have the responsibility of connecting the defendant by other evidence and other testimony and other documents, and if we fail to do it, we fail to prove our case.

But our having to do that as our second requirement should not place a restriction upon our proving the first element of the offense, that element being what the Communist Party teaches and advocates.

This witness is for that first element of that, and I think the connecting up to the defendants that counsel constantly refers to and has referred to from the very beginning of this case is, in his opinion, perhaps necessary, but if we take that seriously, we remove from the Government the right and privilege and the duty that it has to
389 prove in this particular kind of statute, a strangely worded statute but one passed by our own Congress and sustained by our own courts, an independent element of the offense which we have to prove.

The witness will direct his testimony to that part, and without connecting that testimony to the defendant, I think his testimony is admissible, documents placed in evidence as a result of his testimony are admissible.

Now as far as the qualification of this witness is concerned, we intend this to show only the fullness of his qualification because he will testify as to what those aims

and purposes are, and his ability to testify to that depends upon his knowledge and his experiences with the Communist Party.

I concede we should not prejudice the defendant's case by anything that is inflammatory, that does not connect with him, that might mistakenly be taken by the jury as connecting with him in any way. For that reason we concede counsel's point to that part and we quickly and willingly do so because the Government is interested in doing justice in this case, and willingly we receded from the offer we made yesterday to the point where we put in
390 there facts of that occurrence without the details that are inflammatory.

I think in the light of the broad statements of the judge in the Flynn case, our concession here which I feel nevertheless is not even made necessary by the Flynn opinion, but our concession here is a very generous one and one solicitous of the welfare of the defendant.

391 The Court: I take it, Mr. Parsons, that with this witness you expect to put a hypothetical question.

Mr. Parsons: An opinion question.

The Court: Yes, asking him what his opinion is after reciting certain things, "What is your opinion as to whether or not the Communist Party advocates the overthrow of the Government?" or words to that effect.

Mr. Parsons: Well, we will of course recite the facts based upon his background.

The Court: Yes, I am talking about the recitation of fact.

Mr. Parsons: That is the ultimate question.

The Court: I know that is what you expect to ask him finally, I take it, is that right?

Mr. Parsons: Yes, sir.

The Court: Well, now on opinion evidence, is that competent against defendants?

Mr. Parsons: Your Honor, I didn't expect to go into that at this moment, but I do have the cases, and I have some material with which to go into it, if your Honor wishes.

We have, your Honor, a rule set out in the Federal Rules of Criminal Procedure on the book 1948 which
392 codify to some extent the common law and which resulted from much study by learned men throughout the country and from much practice by states that early

adopted a uniform code of criminal procedure to the extent that expert testimony is important and is necessary in many cases.

The intricacies of modern civilization are absorbed in a case such as this as they never before have been absorbed in a case.

The intricacies of modern civilization have made it necessary in cases for the Court and the jury to depend upon the testimony of those who are in a better position to know than the average person for the inferences to be drawn from elementary fact and to testify as to those inferences.

For that reason, we have a Rule 28, Federal Rules of Criminal Procedure, that has been followed in every one of the Smith Act cases.

That has been followed in many other cases, your Honor. The matter of admissibility of expert opinion and testimony was raised in two of the three cases for conspiracy to violate the Smith Act which has been decided by the Appellate Court.

It is the contention of the Government that these
393 cases are in point since both the conspiracy in the membership cases required proof of the aims and purposes of the Communist Party.

In *U. S.* v. *Dennis*, 183 F. 2d 201, page 229, Judge Learned Hand disposed of this matter as follows:

"Next as to evidence alleged to have been erroneously admitted: first, as to the testimony of the witness, Budenz, who had been a Communist in good standing, the managing editor of the party paper, the Daily Worker, but who had become an apostate. His testimony was of two kinds: he swore to the meaning of such terms as 'Marxism-Leninism,' 'revisionism,' 'opportunistic error,' 'exceptionalism' and other similar terms which constantly recur in Communist writings. Some of these are coined words, some are words used in another than their colloquial meaning; but all have, as he testified, an accepted conventional meaning among members of the Party. He was as well qualified as an expert to know what that meaning was anyone could be; and we cannot see any more reason to
394 exclude his testimony than to exclude the evidence of any other parts of the mutual understandings of the defendants. As for the rule against conclusions, it is at most only one of convenience, and in this case every con-

sideration of convenience made against its imposition. Budenz' other testimony was that there were certain passages in the Communist Constitution, which were innocent upon their face, but which were understood by the initiate to be only a cover—'window dressing'—for the violent methods advocated and taught. This was so patently competent testimony that it needs no discussion."

Likewise in *Frankfeld* v. *United States*, 198 F. 2d 679 pages 689 to 690, in discussing expert witnesses' testimony for the Government, one of which witnesses was Lautner, the same gentleman who is on the stand now, the discussion proceeded as follows:

The Court said:

395 "Another contention of the defendants is that there was error on the part of the trial judge in permitting witnesses for the Government who were found to have expert knowledge with respect to the teachings and purposes of the Communist Party to testify with regard thereto, since the matter involved was one of the ultimate issues for the decision of the jury. It is difficult to see, however, how better evidence of the teachings and the purposes of a party could be obtained than from the testimony of those who heard and participated in the teachings sponsored by the Party. Insofar as the testimony related to the fact of the teachings of the Party, its admissibility does not admit of argument. Insofar as it involved matter of opinion, this related to a matter involving specialized knowledge, as to which the opinion of experts is unquestionably admissible, even though it relates to a matter which is for the decision of the jury. *Transportation Line* v. *Hope*, 396 95 U. S. 297, 298, 24 L. Ed. 477:"

Then a sub-quote:

" 'Where the matter under inquiry is properly the subject of expert testimony, it is no objection that the opinion sought to be elicited is upon the issue to be decided'."

And the Court goes on with many other citations and ends stating:

"There was no invasion whatever of the province of the jury. They were allowed to consider the expert testimony along with the documentary and factual evidence upon which it was based and all other evidence in the case in arriving at a verdict."

Then other citations follow.

On the question, your Honor, of the admissibility of expert or opinion testimony we have a number of other cases:

Central Railroad Company of New Jersey v. *Monahan;*
United States v. *Cotter, et al.;*
United States v. *Schneiderman;*
Fireman's Fund Indemnity Company v. *United States;*
397 *Een* v. *Consolidated Freight Ways.*

Those are citations which we could give directly.

And we refer your Honor to 7 Wigmore Evidence, 3d Ed., Section 1923 and Section 1929.

We might also see Section 401 Model Code of Evidence of the American Law Institute.

The utilization of expert witnesses in a criminal case is not unusual, your Honor. Rule 28 of the Federal Rules of Criminal Procedure—it is a recent rule, 1948, in its own language contemplates that in just such a case as this not only may the parties submit their own expert witnesses where the defendant had a right to submit his also, but that the court might well require the parties to bring in certain witnesses to testify to this delicate but difficult-to-understand fact.

398 Mr. Abt: Your Honor, the discussion has taken a much broader sweep than as we originally started.

The Court: I probably provoked it, I asked the question.

Mr. Parsons: I apologize for going forward, your Honor. I didn't want to repeat myself after we got on the outside.

May I complete one thing, your Honor: I feel in this case that it is indeed proper testimony.

Now the nature of the questions that were in the Flynn case—I mean in the Frankfeld case, is of two natures, if your Honor recalls my recitation:

First, as to those facts from which the witness would draw his conclusion, and second as to the conclusion itself.

We do have that problem of balance.

For example, we might ask him: "Based upon your background, et cetera, what is Marxism-Leninism?"

That is not the ultimate fact to go to the jury, that is true; but then the ultimate fact to go to the jury, the ultimate fact would be, does the Communist Party teach

and advocate the overthrow of the Government by force and violence?

399 We shall not ask that question. We shall ask no question more probative than:

"What are the aims and objectives of the Communist Party?"

And I think that by staying within the language of the Frankfeld case and of the Dennis decision that we are clearly within very good law.

Mr. Abt: If your Honor please, it seems to be that Mr. Parsons starts with a fundamental misconception of what the issue is in this case.

It is true the first paragraph of the indictment recites the Communist Party is a society of persons, et cetera, but the question is, how can Mr. Parsons prove that fact in this case to the extent that it may be relevant?

When I said, if your Honor please, that the essential issue here, and it seems to me it is the one issue here, is, did Mr. Lightfoot have knowledge that the Communist Party—

The Court: That I don't think is connected with this matter under discussion now.

Mr. Parsons: That is right.

Mr. Abt: I think it is in this sense, your Honor:

Mr. Parsons takes a position, as I understand him, 400 that he is going to try his case in two compartments.

First he is going to try the Communist Party and establish that it advocates the overthrow of the Government by force and violence, and in quite a separate compartment he is going to establish Mr. Lightfoot's knowledge of that fact.

Now I submit that the case cannot be tried that way.

And if this were an ordinary criminal case, I think it would be clear that the only evidence that is admissible against Lightfoot is evidence of act or declarations or knowledge that he personally had or participated in, authorized, ratified, et cetera. This is not a conspiracy case.

Mr. Parsons: May I—

Mr. Abt: May I finish?

Mr. Parsons: I'm sorry.

Mr. Abt: This is not a conspiracy case, your Honor.

There are so many cases, your Honor, I don't know which to choose from.

"In prosecutions for conspiracy the acts and declarations made by one of the conspirators in the furtherance

of the conspiracy may be received in evidence against all of his co-conspirators."

401 The Court: No doubt about that.

Mr. Abt: (Continuing.)

"But aside from exceptions of this character, the rule is firmly established that declarations of their declarations of third persons cannot be introduced in evidence against the defendant on the trial of a criminal case in the absence of other substantial evidence tending to prove that such third person is speaking and acting for and on behalf of the defendant, and with the defendant's knowledge and consent."

Now when Lautner takes the stand and says "It is my opinion that the Communist Party taught and advocated so-and-so," that testimony cannot be admissible as to the defendant, your Honor, because the issue, what was the defendant's knowledge and opinion and understanding, not what this man's was.

The Court: They would have to prove that.

Mr. Abt: Yes, of course they will have to prove it.

And it seems to me, because they have to prove that, your Honor, that the opinion of a man as to what he thought about the Communist Party is inadmissible here.

402 Let me say this too, your Honor:

It seems to me we are somewhat ahead of ourselves. Let's look at the status of the evidence at this point in the case, your Honor. We have been going for two days. What has been established here?

It has been established that Mr. Lightfoot is a member of the Communist Party, which was conceded; that he held various local offices in the Communist Party, State offices in the Communist Party; that he attended a Convention of the National Convention of the Communist Party in 1948, and that he has read some books, the contents of which are not yet in evidence. It is all there is in evidence about Mr. Lightfoot at that time, your Honor; and I repeat again, that the essential element of the case is, did Lightfoot know that the Communist Party teaches and advocates the violent overthrow of the Government.

The Court: Yes, I think that is so.

Mr. Abt: That being so, your Honor, there seems to me, if such knowledge exists, that there are very easy ways to prove it by what Lightfoot said, by what he wrote, by what he did.

Certainly at this stage in the case, to put an expert
403 on the stand and this expert Lautner says, so far as we know, his only contact with Lightfoot was he checked him into the 1948 Convention, that is all he knows about the man at this state of the record, and to ask Lautner at this time in the absence of any evidence of any hint even of knowledge of Lightfoot, we haven't in this record so far, your Honor, gotten in one single conversation that Lightfoot was engaged in, one single piece of literature that he has written, there is nothing there, and now they want to put on an expert to say, "In my opinion the Communist Party advocates the violent overthrow of the Government," what could be more prejudicial than that?

Mr. Parsons: May it please the Court—

The Court: Have you finished, Mr. Abt?

Mr. Abt: Yes, sir.

Mr. Parsons: In the first place, I think we have proved that Lightfoot has a source of more knowledge than counsel has admitted in his statement. He not only did a lot of reading, but he did a lot of teaching and taught from certain books—

Mr. Abt: I accept the amendment, but there is no evidence as to what he taught.

Mr. Parsons: Well, those books are not in evidence, that is true. When they are in evidence, that will come
404 out.

Counsel says that this is not a conspiracy case. He has continued to say that. I think we should not allow that insistence that it is not a conspiracy case to cloud our realization that the difference between a conspiracy case and any other criminal case is not that great as to permeate every element of proof to require that it be necessary that everything that is entered into evidence in a case like this under a statute like this be directly connected up to the defendant before it is entered into evidence.

If it is admissible, for one purpose, it may be entered into evidence, and if we do not prove the other part of the statute, then we have lost the case, the Court will grant counsel's motion for a judgment of acquittal at the end of the Government's case.

We have got to do that, that is true; but we should not be deprived of the right and opportunity to put our evidence in as it relates to the necessary elements as set out in the statute and set out in the indictment.

The Court: Have you finished?

Mr. Parsons: Yes, sir.

405 I had in my mind and heart one other suggestion, but I don't want to let it out. Counsel says we haven't done it, and I was going to ask, what other way can this be proved in?

Mr. Abt: The knowledge of the defendant?

Mr. Parsons: No, I mean the case, what other way can it be proved by? It is impossible to prove it in any other way.

We are taking a greater burden because we realize it is impossible.

The Court: Well, I think he has already testified, as I get the impression, somewhere, that he was expelled from there.

Mr. Parsons: Yes, sir.

The Court: And he was denied a rehearing—

Mr. Abt: That is right, your Honor.

The Court: Denied a hearing or rehearing, whatever it may be.

Mr. Parsons: Yes, sir.

Mr. Abt: That is right.

The Court: Isn't that as far as you expected to go in that?

406 Mr. Parsons: Well, we expected to establish that the denial of the rehearing was not in accordance—did he say, your Honor, that he was denied a rehearing?

Mr. Abt: Yes, he did.

The Court: I think he did.

Mr. Crockett: He said he didn't hear from the appeal.

Mr. Abt: Filed an appeal and never had an answer to it.

The Court: It was never answered.

Mr. Parsons: That slips my memory.

The Court: Then we don't need to be concerned about the details of that basement episode, as I take it, from Mr. Parsons.

Mr. Parsons: We will graciously accept your Honor's ruling.

The Court: Now when it comes to the matter of opinion evidence, I will rule on that, I think.

Mr. Parsons: That will be the first thing, your Honor, that is the next question.

The Court: The next question?

Mr. Parsons: Yes.

The Court: Well, I am inclined to permit it in.

Mr. Abt: May I be allowed to be heard further on
407 it when the question is asked, your Honor. That is, how it shapes up, I would like to hear the question.

The Court: All right.

Mr. Parsons: Will this require the jury retiring again?

Mr. Abt: I presume it would, wouldn't it, your Honor?

The Court: What is your question. We might just as well meet it now.

Mr. Parsons: My first question—yes, let's meet it now—my first question will have as a preliminary part of it a statement that will follow:

"Based on your background in the Communist Party, your background of twenty-one years of active membership, your training as a Communist, your reading and study, your professional experience as a teacher and professional functionary, your personal contacts with top Communist personnel over many years, your intimate acquaintance with the organization, operation and program of the Communist Party, and your research and your study, was there any difference between the basic ob-
408 jectives of the Communist Party of the United States as that Party existed prior to the formation of the Communist Political Association and as it existed after the reconstitution of the Party in 1945?"

With that same preliminary statement, the second question would be:

"Has there been any change in the basic objectives of the Communist Party since the reconstitution in 1945?"

The third question—we won't ask to repeat the lengthy statement, we will say without repeating it in detail:

"What are the principles that guide the activity of the Communist Party of the United States?"

And the next question:

"What is Marxism-Leninism?"

And after that question, "What is Marxism-Leninism?", we of course will want to know if it is to be found documented anywhere and if there are any printed material of the Communist Party which enunciate this principle, and if there are any particular portions of that material which more than other portions establish that principle.

409 Then our last question, without repeating the initial part in detail:

"What are the aims and objectives of the Communist Party of the United States?"

Now we are not going to ask him, does the Communist Party of the United States advocate the overthrow of the Government.

I think that is the ultimate question. These are opinion questions.

The Court: What do you suppose his answer will be when you ask what the aims are?

Mr. Abt: Yes. That is the ultimate question.

The Court: His answer will be just that, won't it?

Mr. O'Donnell: Yes, sir.

The Court: That is a matter for the jury to decide.

Mr. Parsons: It is a matter for them to decide. I think if his answer is that, it is still a matter for them to consider in the light of his background as an expert witness.

The Court: What do you say?

Mr. Abt: I would say several things, Judge.

First, in the conspiracy cases, Judge Hand's opin-
410 ion, for example, what occurred there—

The Court: Well, pardon me. I take it that those cases that you read from, that in substance that question was asked?

Mr. Parsons: Those questions were asked, yes, sir.

The Court: Or those questions.

Mr. Abt: I don't think they were, Judge.

Let me tell you the setting which is as how I recall it, and Miss Shaw has the fullest record here, she showed it to me this morning so it would be easy enough to check it, my recollection is that Budenz' testimony occurred in the following setting:

411 Mr. Crockett was one of the counsel in that case, and as a matter of fact reminded me of this approach on the part of Judge Medina.

As a matter of fact, Budenz was first asked by the prosecution to testify as an expert "What is your understanding of such and such a term?"

There was an objection and the objection was sustained.

And Judge Medina finally framed the question.

Now Budenz, it was shown, had associated with the defendants, had had numerous discussions, conversations, et cetera, with the defendants in that case, had participated with them in the 1945 convention, and the question as finally put to Budenz was:

"What was your common understanding, you and those associated with you, of the aims of Marxism-Leninism or of the meaning of the preamble of the Constitution, et cetera?"

In other words, Budenz wasn't testifying there as an expert in the sense of giving an opinion of his own. He was testifying as to the common understanding of
412 himself and his associates as to the meaning of that term.

We don't have that situation here, at least as of the moment, because as of the moment Lautner says that his only contact with the defendant was checking him into the 1948 convention.

As of the moment Lautner has no basis for testifying as to his and the defendant's common understanding of the meaning of any term because there is no evidence they ever discussed any term together.

So that it seems to me, and I am sure you will find I have given you a very accurate description, your Honor, haven't I, Mr. Crockett?

Mr. Crockett: That is right.

Mr. Abt: Of exactly what occurred before Judge Medina. This is a completely dissimilar situation.

In addition, of course, your Honor has stated a principle, and I think of course it is clear, your Honor and unless you want me to, I certainly shan't cite authority for it, that his general expert opinion is not permissible with reference to the ultimate issue in the case because that is a question for the jury, and in the criminal case such evi-
dence certainly is not, or such opinion testimony cer-
413 tainly is not admissible.

And all of Mr. Parson's questions essentially go to the ultimate issue in the case, what is the meaning of Marxism-Leninism?

Mr. Parsons wouldn't ask that question and he did not expect the answer to be that Marxism-Leninism means the advocacy of overthrow of the Government. What are the objectives of the Communist Party, et cetera?

The Court: If you understood me to say that an expert witness could not testify as to some of the ultimate questions to be decided by them, I think you were in error. I meant to say, for instance, in a personal injury suit, a witness may testify as to the permanency, and that is one of the questions the jury may decide as to whether or not it could or would have been caused by a certain situation.

Mr. Parsons: I believe, your Honor, in the Frankfeld case the Court relies on personal injury cases in supporting his position.

Mr. Abt: If your Honor is interested, let me just give you the citation of just a few cases here.

I have a Supreme Court case on that very question, your Honor, *U. S.* v. *Spaulding*, 293 U. S. 498, at page 506;

414 "Their medical opinions that respondent became totally and permanently disabled before his policy lapsed are without weight • • • Moreover, that question is not to be resolved by opinion evidence. It was the ultimate issue to be decided by the jury upon all the evidence in obedience to the Judge's instructions as to the meaning of the crucial phrase, and other questions of law. The experts ought not to have been asked or allowed to state their conclusions on the whole case."

Let me read you just one other citation, your Honor, from a criminal case. I have a number here, but I won't trouble you with them.

I believe it is Wesson, W-e-s-s-o-n—I may have the name wrong—*Wesson* v. *United States*, 164 F. 2d 50, at page 54, Eighth Circuit case, your Honor.

This was a prosecution for narcotics. The United States asked the Government that is, asked a medical witness whether in his opinion a reputable physician in a town of so-and-so many people could dispense and administer in a certain length of time a certain number of grains of morphine, the amount of morphine they found on him, and the Court held that the question was completely improper, saying as follows:

415 "Ordinarily there is no reason to admit opinion evidence on a matter that is fully capable of proof and comprehension from available fact and testimony. And any such unnecessary opinion evidence in a criminal case that will inescapably be a plain expression of the witness' opinion of the defendant's guilt, even though by circumlocution, should be scrupulously avoided."

Mr. Parsons: Your Honor, I might give one citation of the Supreme Court, *United States* v. *Johnson*, 319 U. S. 503, page 519.

I might also state that the language of the Frankfeld case is very clear when it says that in so far as it involved the matter of opinion, there the answer involved both matters of probative evidence as to what the defendants

did and a matter of opinion, in so far as it involved the matter of opinion the Court said that this related to the matter involving specialized knowledge as to which the opinion of experts is unquestionably admissible even though it relates to a matter which is for the decision of the jury.

I studied this thoroughly last evening from case
416 books, and from texts, from Wigmore. I even went to—what is this gentleman who publishes "Trial Technique"—Goldstein, and even Goldstein begins his chapter on expert witnesses with the rule that, the hearsay rule, that only elementary facts may be testified to has one great exception and that exception is as to opinion evidence.

I went back into the history of Rule 28, in the Federal Rules of Criminal Procedure, and the whole thing grows out of the fact that as this life of ours grows in intricacy and in difficulty, the understanding by the jury of elementary fact and the placing of those facts together to a conclusion is often very, very difficult, if not impossible, so that the rule contemplates that in a situation such as this one that involved a statute that goes into such matters as the advocacy and teaching of the Communist Party, it is so far removed from the general knowledge of the average person who would place himself in the jury that he needs it, that he needs that testimony.

And Rule 28 would contemplate that the Court would require both sides to produce expert witnesses or to agree upon one.

I believe, as your Honor stated, in many, many,
417 many personal injury cases they testify as to facts which would have to be decided by the jury. That is the purpose of expert testimony.

Mr. Abt: Well, two things, your Honor:

First, I would just like to cite on the question of opinion evidence, on the ultimate fact, without reading the opinion, a Seventh Circuit case, *Altmeyer* v. *Travelers Insurance Company*, 119 F. 2d, page 1005, at page 1008.

But it seems to me, your Honor, perhaps I have not made myself completely clear, that apart from this general question as to when expert opinion testimony is admissible, there is another fundamental vice in the Government's position.

It is true there is this first paragraph in the indict-

ment which alleges the character of the organization. But the character of the organization goes only in this case—the character of the organization is only relevant in this case in so far as Mr. Lightfoot knows the character of the organization.

The Court: Yes, but you cannot prove it all at once.

Mr. Abt: I think you have to in this case, your Honor.

418 The Court: That, I think, is where perhaps we differ.

Mr. Abt: Let me indicate to you why.

The Court: All right.

Mr. Abt: If this were a conspiracy case, you first prove the existence of a conspiracy or you could, the existence of the conspiracy, and then you prove the defendant's membership in the conspiracy. And when you got all done, you would instruct the jury that unless, number one, they found that a conspiracy existed, and number two, that the defendant was a member of that conspiracy, they could not convict him.

419 What Mr. Parsons is contending for here essentially is to try this case as though it were a conspiracy case in which the Communist Party was a conspiracy. That is to say, he proves the character of the Communist Party, then he proves the defendant's membership in the Communist Party, and then he proves something about the knowledge of the defendant as to the character of the Communist Party. Then I suppose he will ask you to instruct the jury, at first you must find that the Communist Party is such an organization, then you must find that the defendant was a member of it, and then you must find that he knew. And on the basis of conspiracy principles, what are essentially conspiracy principles, your Honor, he says that he can establish the character of the Communist Party by acts and declarations which are not connected with the defendant. That is what it comes to here.

It is our position, your Honor, that except in a conspiracy case, and as I said before, it is one of the most fundamental rules of law for the protection of defendants, that in a criminal case all of the evidence offered against that defendant must be connected with him in some

420 fashion or another. The only exception to that is a conspiracy case where the indictment is for conspiracy, your Honor, and I submit that when you analyze the thing

out, what is happening here fundamentally is an extension of the conspiracy principle.

Your Honor said before, and we all have to agree with you, that if this inflammatory testimony went in about the cellar incident, no instruction you gave the jury could remove that from their minds. It is equally true here, your Honor, that if this witness gets put on the stand and testifies, "It is my opinion that the Communist Party advocates a violent overthrow of the Government", and he gilds the lily on that proposition through half a dozen opinion questions and what not, nothing you would ever say to the jury, your Honor—and I think as lawyers we know it—nothing you would ever say to that jury is going to be able to get them to disconnect that testimony from Lightfoot's knowledge.

As I say, essentially what Mr. Parsons is trying to do here is to convert this case into a conspiracy case. I want to say this, your Honor, and I say it very seriously. Conspiracy law is ancient law, and the courts still apply it,
421 but I know, your Honor, that many courts and many judges have commented from time to time on the difficulties that a defendant labors under in a conspiracy case.

Only as recently here in the Seventh Circuit as the Konovsky case, with which I am sure Mr. Parsons is familiar, you will recall, your Honor, the Court of Appeals quoted with approval Mr. Justice Jackson's strictures on conspiracy in the Krulewitch case, in which he pointed out the problems that a defendant is touched with in a conspiracy case, precisely this situation, your Honor.

I want just to quote a line or two from Mr. Justice Jackson's decision in that case to remind your Honor of it. He said:

"A co-defendant in a conspiracy trial occupies an uneasy seat. There generally will be evidence of wrongdoing by somebody. It is difficult for the individual to make his own case stand on its own merits in the minds of jurors who are ready to believe that birds of a feather are flocked together."

Then he says:

"* * * even when appropriately invoked, the loose-
422 ness and pliability of the doctrine—"

That is the conspiracy doctrine, your Honor.

(Continuing:)

"—present inherent dangers which should be in the back-

ground of judicial thought wherever it is sought to extend the doctrine to meet the exigencies of a particular case."

423 I submit, your Honor, that is exactly what is happening here. The issue here is the defendant's knowledge. That is susceptible of, if it exists, simply susceptible of proof by direct testimony of what the man said, did or declared. To resort to this opinion testimony, your Honor, and I hope your Honor is following my argument—

The Court: Yes.

Mr. Abt: Understands my point, rather. I am sure you follow my argument, but am I making myself clear?

The Court: Yes, I think you are.

Mr. Abt: To let in this opinion testimony in its essence is to apply conspiracy law to a non-conspiracy case, and to help convict this man not on anything that was in his mind that he knew, said or did, but on the basis of what some third party said or did, who on his own testimony at this time has never even spoken to the defendant.

The Court: Mr. Abt, following out your theory, then, if you did not admit that he was a Communist or belonged to the Communist Party, I take it that you would contend that before they could introduce anything that they would have to prove that?

Mr. Abt: It would be a question of order of proof,
424 your Honor. I am not raising a question on the order of proof, your Honor.

The Court: I will rule on the questions as they are presented.

Mr. Abt: Your Honor, I am sorry, but I want to take up one more thing.

The Court: All right. Go ahead.

Mr. Abt: This has rather disturbed me. That is that both afternoon papers, I don't know whether you have read them, your Honor, but both afternoon papers carry the story of Lautner's appearance on the witness stand and state in very colorful and inflammatory language the substance of this cellar story. For example, here is the Herald-American. The first paragraph of the story is:

"An ex-Communist once subjected to Party discipline by pistol, rubber hose and butcher knife, took the stand against Claude Lightfoot today."

That goes on, and it says:

"Government prosecutors hope to get Lautner's exciting story before the jury of seven men and five women."

And the story in The Daily News is to the same effect.

425 The Court: What do you want me to do about it?

Mr. Abt: I don't know, your Honor. I know that you could admonish the jury.

The Court: Yes. I have, and—

Mr. Abt: But I know also, your Honor, what in practice these admonitions usually mean.

The Court: Yes.

Mr. Abt: I would like to make this suggestion for your Honor's consideration, at least that you ask the jury whether they read these stories, and ask them completely to disregard them, that the stories have no place, not coming into the case. Do what you can on it, your Honor.

Mr. Parsons: We have no objection to that, your Honor.

The Court: I think I would go farther.

I am getting some fine fan mail at home.

Mr. Parsons: I am, too, your Honor.

The Court: And I get through the grapevine here that some of the jurors are.

I think I will instruct them not to pay any attention to it, to relegate it to the waste paper basket. That is where mine goes, from whatever it may be. Most of it that I get is concerning religion, someone that has religion and is

426 trying to expose it.

Mr. Parsons: In one of my fan letters, your Honor, the writer said, "I will be seeing you at your house tonight."

The Court: Of course, I will tell you, Mr. Abt, in my opinion those ads that were printed, that does not do this any good.

Mr. Abt: The ads, you mean, before the trial started?

The Court: Before the trial. I don't know whether they are continuing or not, particularly the ones that invite everyone to come down to the court here. I question whether, if I was running a newspaper, I would print it, and I question whether it would do anyone any good.

Mr. Abt: I advised my client, your Honor, when the case just started that there should be no more ads.

The Court: I see.

Mr. Abt: I trust that there will be no more.

The Court: All right. We will proceed until the end of the noon today, and then I will let you have a reprieve until Monday.

Mr. Abt: Thank you, your Honor.

427 (Whereupon the jurors took their seats in the jury box, and the following proceedings were had in the presence and hearing of the jury:)

The Court: Members of the jury: Articles appear daily in the newspapers. I asked you not to read those articles, because the only evidence you are going to consider here is what is produced in this courtroom, not what the newspapers say, or any other publication.

Further, it may be that you, like myself, are receiving what you might call "fan mail". If you do I would just relegate it to the waste paper basket, because it has nothing to do with this.

Thank you.

Mr. Parsons: Will you take the stand, Mr. Lautner?

JOHN LAUTNER, a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Continued) by Mr. Parsons.

Q. Your name, please?

428 A. My name is John Lautner.

Q. Are you the same John Lautner who testified in this court yesterday?

A. Yes.

Q. Mr. Lautner, based upon your background in the Communist Party matters, your twenty years of active membership, your training as a Communist, your reading and study, your professional experience as a teacher and professional functionary, your personal contact with the top Communist personnel over many years, your intimate acquaintance with the operation of the Communist Party, and your research and study, was there any difference between the basic objectives of the Communist Party of the United States as that Party existed prior to the formation of the Communist Political Association and as it existed after the Party's reconstitution in 1945?

Mr. Abt: I object, your Honor, for all of the reasons we have previously discussed.

I should only like to add, your Honor, that with this question the Communist Party is put on trial here, although

it is not a defendant named in the indictment, your
429 Honor, and also the defendant is placed under the burden of defending the Communist Party although he is being tried himself solely as the sole defendant in this case.

The Court: I take it that is preliminary to other questions that you expect to ask, Mr. Parsons?

Mr. Parsons: This is an opinion question, your Honor.

The Court: Objection overruled. He may answer.

By the Witness:

A. There was no change of basic objectives of the Communist Party as it was prior to the Political Association and after reconstitution.

By Mr. Parsons:

Q. Now, without my repeating my earlier statement, but based upon that statement relative to the extensiveness of the experience you have had and your knowledge of the things regarding the Communist Party of the United States, has there been any change of basic objectives of the Communist Party of the United States since 1945?

Mr. Abt: Your Honor, I object on all the grounds
430 previously stated, and I further object upon the ground that by the testimony of this witness he left the Communist Party in January 1950, has not since been a member of the Communist Party or participated in any way in its activities, and therefore he has not been qualified as an expert, certainly, able to answer this question during the period subsequent to his expulsion, and indeed during the three-year period next preceding the return of the indictment or the statutory return here.

Mr. Parsons: Yesterday, your Honor, I submit the witness testified at great lengths, and particularly during the latter part of the day, about his position in the Communist Party of the United States, where he received information of material and study and upon which the Government relies upon him for advice as to Communist matters today. I submit his experience goes right up to the present time.

Mr. Abt: I would like to say—

Mr. Parsons: May I make one further statement?

431 If the United States Government, with its responsibility to one hundred sixty million people, can depend on this man for that information he should be permitted to answer it. I am not reluctant to submit him to testify on those matters.

Mr. Abt: Mr. Parsons is testifying now.

The Court: The latter part may be stricken out, and the jury will disregard the last remark.

Mr. Abt: All the evidence shows is that since this man has been working for the Department of Justice he has been reading the papers, including the "Communist Daily Worker" and other publications publicly published and circulated by the Communist Party. I submit he has not been qualified and should not be permitted to testify on those matters subsequent to his expulsion, and for the reasons I have previously noted for any prior period.

The Court: He may answer the question. Objection overruled.

The Witness: May I have that question, please?

432 By Mr. Parson:

Q. Has there been any change in the basic objectives of the Communist Party of the United States since 1945?

A. No basic changes of the Party, no.

Q. Now, Mr. Lautner, without my repeating in detail the first part of my first question, but based as therein upon your extensive knowledge of the Communist Party matters and activities, what are the principles of the Party that guide the activities of the Communist Party of the United States?

Mr. Abt: I object on all of the grounds I have previously urged, your Honor.

The Court: He may answer.

By the Witness:

A. The principles of Marxism-Leninism.

By Mr. Parsons:

Q. And what is Marxism-Leninism?

Mr. Abt: I object, your Honor.

The Court: Objection overruled.

By the Witness:

A. Marxism-Leninism is—

The Court: Now, this is an opinion, of course.

433 Mr. Parsons: Yes, your Honor.

By the Witness:

A. (Continuing)—is the writings of Marx, Engels, Lenin and Stalin, and its application in this period, this

present period known as Imperialism, and it is the theory and tactics of the proletarian revolution in general, and the theory and tactics of the dictatorship of the proletariat in particular.

By Mr. Parsons:

Q. Is that principle documented anywhere?

A. Yes.

Q. Where?

A. It is documented in the writings of Marx, Engels, Lenin and Stalin.

Q. What writings are these, sir?

A. Some of these writings are "Foundations of Leninism," "Problems of Leninism," "State and Revolution," the "History of the Communist Party of the Soviet Union (Bolshevik)" and others.

Q. Is that documented in any writing that is an official writing of the Communist Party of the United States?

A. Yes. The references are made—

Mr. Abt: Just a moment. I think that has been 434 answered.

The Court: Hasn't that question been answered? He answered "Yes."

Mr. Parsons: Yes, your Honor.

By Mr. Parsons:

Q. What is it, sir?

A. For example, in the pamphlet "The Struggle Against Revisionism," the Foster report and other writings.

Q. I will show you Government Exhibit 22 for identification, which is a book entitled "The History of the Communist Party of the Soviet Union" and ask you if that is one of the documents to which you refer in your testimony.

A. Yes, it is.

Q. I will show you Government Exhibit 23 for identification which is a book entitled "State and Revolution" by Lenin and ask you if that is one of the documents to which you refer in your testimony.

A. Yes.

Q. And I will show you Government Exhibit 19, "Foundations of Leninism" by Joseph Stalin, Exhibit 19 for identification. Is that one of the books to which you refer?

A. Yes it is.

435 Q. I will show you Government Exhibit 21 for identification, "Problems of Leninism" by Joseph Stalin. Is that one of the books to which you refer?

A. Yes, it is.

Q. I will show you Government Exhibit 48 for identification on "The Struggle Against Revisionism" and ask you if that is one of the books to which you refer.

A. Yes.

Q. Now, Mr. Lautner, are there in these books particular passages which, more than others in them, establish that principle?

Mr. Abt: I object, your Honor.

The Court: Objection overruled.

By the Witness:

A, Yes, there is.

By Mr. Parsons:

Q. If I show you these documents could you point out those passages to us?

A. Yes.

Q. Very well. Let me show you Government Exhibit 22 for identification, and I will ask you if you—

The Witness: May I have the others, please?

436 By Mr. Parsons:

Q. Let me show you all these exhibits, Government's Exhibit 48 for identification, 21 for identification, 19 for identification, 23 for identification. Will you answer my question as to all of those exhibits?

Mr. Abt: If your Honor please, I note that Exhibit 22, "The History of the Communist Party of the Soviet Union" has a whole series of paper clips in it.

May I ask whether the witness is simply going to cite the pages now identified by the paper clips?

Mr. Parsons: No, we will not rely on those. The clips were placed in there yesterday as we discussed this with you. But I shall be glad to ask the witness.

Mr. Abt: If you are simply going to do it by use of the paper clips then we might save time.

The Court: If you know what will be elicited from this witness will be certain pages, you do know that?

437 Mr. Parson: We do, your Honor.

The Court: I think I will permit you to ask him directly, are those the pages.

Mr. Parsons: Yes, certainly that will save time.
By the Witness: Yes, certainly that will save time.

By Mr. Parsons:

Q. Will you still look at the exhibits, and then I will ask you questions.

Mr. Abt: May I ask for our own information to speed up the process, Mr. Parsons: The witness is now going to give some pages that you gave us, the same pages you gave us in the specification page numbers? Is that right?

Mr. Parsons: In fact, the pages are much fewer.

The Court: But they are included?

Mr. Parsons: They are inclusive, yes.

Would you like to stipulate?

Mr. Abt: I should not like to stipulate, but I was asking for the information.

Mr. Parsons: If the Court please, the witness can I think eliminate a great many of those if I ask him to
438 go through and indicate the pages, a few pages, and I think that will save us having to put all of it in.

The Court: Very well.

By Mr. Parsons:

Q. Will you please name those pages?

A. Yes, I will. "Foundations of Leninism" on pages 9 and 10, pages 20 to 23, pages 44, 45, pages 45, 46, 48, 50, 54 to 57, 103, 109 and 115.

Q. Would you go to the next one, please?

A. From "State and Revolution"—

Mr. O'Donnell: Excuse me, your Honor.

Will you give the exhibit number for the Reporter, Mr. Lautner?

The Witness: The exhibit number is No. 23 here.

By the Witness:

A. (Continuing.) In Exhibit 23, pages 9 and 10, pages 19, 20, 23, 33.

Mr. Abt: Pardon?

By The Witness:

A. (Continuing.) 23 and 33, 52 and 53.

439 By Mr. Parsons:

Q. And the next one, please.

A. This is Exhibit 48 on "The Struggle Against Revisionism," on pages 56, to 57.

Q. Will you go to the next one, please?

A. "The History of the C. P. S. U." This is Exhibit 22, I think is is; yes, 22. Pages 167 and 168 and pages 352 to 356.

From "Problems of Leninism," Exhibit 21, pages 19, 20, 21, 22, 25 and 26.

That is all.

Mr. Parsons: Thank you, Mr. Lautner. May I have the exhibits, please?

The Witness: Yes.

440 Mr. Parsons: May it please the Court, Government's Exhibits 22, 19, 23, 21 and 48 are exhibits which have been identified by the witnesses that have appeared in this court as documents which have been taught in the schools of Communism, and also have been identified by the witness on the stand as documents which contain the enunciation of the principles of the Communist Party of the United States.

We want to offer into evidence only those pagations of those documents which have been emphasized by the witness on the stand, being as far as Government's Exhibit 19 for identification, pages 9 to 10, 22 to 23, 44, 45, 45-46, 48, 50, 54, 57, 109 and 115.

As to Government's Exhibit 23 "State and Revolution," pages 9 and 10, pages 19, 20, 23, 33.

Mr. Abt: Pardon?

Mr. Parsons: 23 and 33, 52 and 53.

As to Government's Exhibit 22, "The History of the Communist Party of the Soviet Union," pages 167 to 168, and pages 353, 354, 355 and 356.

441 Also as to Government's Exhibit No. 21, "Problems of Leninism," pages 19 to 21, 22, 25 and page 26.

As to Government's Exhibit 48, pages 56 and 57.

In naming these pages, however, I feel we should withdraw our offer as to one page which comes to my mind, page 356 from "History of the Communist Party of the Soviet Union," at this time because that page was not in advance given to counsel in accordance with the requirements of this Court. By its not being given in advance to them we mean we were required to give counsel lists of the pages, and that one was not given.

Mr. Abt: May I ask, Mr. Parsons, are you planning to make some immediate use of these books?

Mr. Parsons: Not today.

Mr. Abt: May I ask, your Honor, we have not had an opportunity to look at the particular pages to which
442 the witness referred, and if Mr. Parsons does not plan to use those books today I should like to ask leave to argue or present my objections to them Monday after we have had an opportunity to examine the pages in question.

Mr. Parsons: I could concede that were it not for the fact that we did in advance of the case submit to counsel a full list of all the pages. I thought that was the purpose.

The Court: I will adhere to my ruling and give him an opportunity to examine them by Monday.

Mr. Abt: Yes, we will be ready Monday for that.

The Court: You will have no objection to showing them to Mr. Abt, giving them to him?

Mr. Abt: I don't think we need the books, your Honor. We have them. My only problem is these are new pages.

Mr. Parsons: No, they are not.

Mr. Abt: If they are not new than it is very diffi-
443 cult for me to follow them in this way.

Mr. Parsons: Any pages not included in the list prior thereto will have to be tendered; that was the rule. I understand that.

The Court: Very well.

By Mr. Parsons:

Q. Now, Mr. Lautner, without my repeating in detail the statement which I made as a part of the first question I asked you this morning, but nevertheless based upon your extensive knowledge and experience and training concerning the Communist Party of the United States and its activities, I ask you what are the aims and objectives of the Communist Party of the United States?

444 Mr. Abt: I object, your Honor, for all the reasons stated previously, and on the further ground that this question now, as I understand it, is addressed to the witness' opinion as to what in Mr. Parsons' view at least is one of the ultimate issues in this case, and on that additional ground I think the question is objectionable and should not be allowed.

Mr. Parsons: And I rely, your Honor, on the Frankfeld case.

The Court: He may answer.

By the Witness:

A. Based on my experience the Communist Party, given certain objective and subjective conditions, its final aim is the destruction of the existing social order known as Imperialism in this particular period, this era, the destruction of Imperialism and its governments, and instituting instead through the proletarian revolution and the dictatorship of the proletariat, socialism.

In the United States, being the leading imperialist country, these aims pertain as the basic aims of the Communist Party in the United States.

445 Mr. Parsons: May it please the Court, I am completed with this witness on his direct questions.

Mr. Abt: I am sorry, I didn't understand that.

Mr. Parsons: I am completed with this witness on his direct questions, except I felt it advisable that he be on the stand while we read some of these passages to the jury.

The Court: While you what?

Mr. Parsons: While we read some of these passages to the jury, if they are permitted in evidence.

At the same time we would like to give counsel the opportunity to study them before he cross-examines.

The Court: What difference would it make when you read them whether he is on the stand or not?

Mr. Parsons: No difference except as an opinion witness if there are phrases that are difficult for me to understand I would like to have him explain them in light of his training.

446 The Court: That is the only purpose?

Mr. Parsons: That is the only purpose.

The Court: Other than that you have completed your direct examination?

Mr. Parsons: Yes.

Mr. Abt: I think there is more involved in it than that. I would be quite insistent that the witness be on the stand and the quotations be read before we cross-examine, so we will be in a position to cross-examine him on what is in effect what his expert testimony is based on.

The Court: Do you expect to cross-examine him on any other matter except what is contained in those?

Mr. Abt: Yes, your Honor.

The Court: Then proceed with that.

Mr. Abt: Wll you give me just a minute, your Honor?

The Court: Yes.

Mr. Abt: May I ask your Honor what time you plan to adjourn?

The Court: About 12:30.

447 *Cross-Examination by Mr. Abt.*

Q. You testified, Mr. Witness, that you left the Communist Party in January, 1950, is that right?

A. That is correct.

Q. And that for a period of time after that you went fishing, is that correct?

A. That is correct.

Q. And that in September, 1950, you wrote a letter to the Federal Bureau of Investigation?

A. That is correct.

Q. Now, was that your first contact with the Federal Bureau of Investigation?

A. That is correct.

Q. Throughout this period until the time that you wrote to the Federal Bureau of Investigation you were unemployed, is that right?

A. That is correct.

Q. Living on your Unemployment Insurance?

A. Yes, and also on my personal funds that I had.

Q. Now, after you wrote to the Federal Bureau of Investigation, as I understand you, you were contacted by agents of the F. B. I., is that right?

A. Yes, I was contacted by them.

448 By Mr. Abt:

Q. Where?

A. I received a telephone call and I was asked to meet the agents at a certain place in the City of New York. I did meet them at this appointed place, and that is where we met and where I came in contact with the Federal Bureau of Investigation.

Q. How long after you wrote the FBI did they contact you, or did that contact occur?

A. About a week or so.

Q. Now, as I understand your testimony, Mr. Witness, from 1930 at the time you say you attended this Hungarian school in Union Square in New York until the time you left the Communist Party you had no gainful employment of any kind except as an official of the Communist Party,

with the exception of the time you spent in the Army, is that right?

A. With this modification: that the school in 1930 was not a Hungarian school, it was a Communist Party school. It was a Communist Party school.

Q. A Communist Party school?

A. That is correct.

Q. All right.

A. And up to the time I left the Party, with the
449 exception of the period of time while I was in the Armed Services, I was a full-time functionary, a professional revolutionary, with the exception also that for a few months or so I worked with my dad out in Elizabeth, New Jersey.

Mr. Abt: If your Honor please, I move to strike the characterization.

The Court: Strike it out.

Mr. Abt: If your Honor please, I move to strike the Court to instruct the witness he can answer the question by saying yes.

The Court: Yes, strike it.

By Mr. Abt:

Q. So, with the exception of the Army period, during those twenty years from 1930 to 1950, your only gainful occupation was what you were paid as an official of the Communist Party?

A. That is correct.

Q. How much did you earn while you were in the Communist Party, a week?

A. Well, anywhere from practically nothing to $60 a week.

Q. $60 a week? $60 was tops, is that right?

A. Minus deductions, that is correct.

450 Q. $60 was the highest gross pay you ever got?

A. That is not so.

The Court: What is that answer?

The Witness: That is not so, I said.

By Mr. Abt:

Q. That is not so?

A. That is correct.

Q. Then I misunderstood you.

A. You did.

Q. Your net pay after Social Security and withholding tax deductions was $60, is that right?

A. That is correct.

Q. That was your highest pay?

A. But it wasn't gross, because there are other—

The Court: No.

By the Witness:

A. (Continuing.) That was the highest.

By Mr. Abt:

Q. That was the highest pay you ever received while you were in the Communist Party, is that right?

A. That is correct.

Q. There were times, as I understand your testimony, when you didn't get paid at all?

A. That is correct.

451 Q. And there were times when you got paid much less than $60 a week, is that right?

A. That is correct.

Q. I think you testified you are a bricklayer by trade, is that right?

A. That is correct.

Q. And you worked at your trade prior to 1930, is that right?

A. That is correct.

Q. But you have not worked at your trade since that time, is that right?

A. In the sense I wasn't occupied in the building trade, no, but I worked at it from time to time just for leisure.

452 By Mr. Abt:

Q. You have never laid any bricks since 1930 for money, is that right?

A. That is correct.

Q. Now, throughout the year 1950 from the time you left the Communist Party until December 31, 1950, did you have any gainful occupation whatsoever?

The Witness: I didn't get that question.

Mr. Abt: Will you read it, please?

(Question read by the Reporter.)

By the Witness:

A. No.

By Mr. Abt:

Q. Now, what have been the sources of your income from January, 1951, to the present time?

A. My source of income was the Department of Justice.

Q. All of the income you have received has been paid to you by the Department of Justice, is that right?

A. That is correct.

Q. You have received no income from any other source?

A. Nothing to speak of. I may have been in one or two hearings like the Board of Regents in New York
453 and down in Texas, but outside of that the Department of Justice is all.

Q. You may have testified for somebody else occasionally other than the Department of Justice and got paid for that, is that what you mean?

A. That is correct.

Q. And you are paid by the Department of Justice, are you not, for furnishing them information and testifying with reference to the Communist Party?

A. Well, no, I am paid by the Department of Justice as a consultant.

Q. I know that is your title.

A. No. My voucher says so. My pay voucher says so.

Q. And your voucher says so?

A. That is correct.

Q. But did you not tell us on direct examination, Mr. Lautner, that what you do for the Department of Justice is to testify and give them information with reference to the Communist Party?

A. And act as a consultant on the Party policies, texts and teachings.

Q. And your function is to give them information about the Communist Party, is that right?

454 A. That is correct.

Q. So from January, 1951 to the present time you have been a professional informer, isn't that right?

A. That is not right. I was never an informer in my life. The informers are the Communists in this country.

Mr. Abt: I object and move to strike it.

The Court: Strike out the latter part.

By Mr. Abt:

Q. Your only means or source of funds is for giving information about the Communist Party, isn't that right?

A. That is not right.

Q. What other visible means of support do you have?

A. I am an employee of the Department of Justice in the capacity of consultant and expert witness.

Q. If you didn't have information to give them you wouldn't be employed by them, would you?

A. I don't know. You will have to ask the Department of Justice.

Q. We will come back to that.

Now, when did you first discuss with the Department of Justice or the Federal Bureau of Investigation the
455 question of compensation for your services?

A. Somewhere around the beginning of 1951. I was approached a number of times before that, and I refused to accept any compensation from them.

Q. Before that time the F. B. I. had offered you some money and you said, "I don't want any"?

A. That is correct.

Q. But this time they offered you some money and you said, "O. K., I will take it"?

A. No, it wasn't that way.

Q. It wasn't that way?

A. No.

Q. How was it?

A. I was told my services will be required for the Government and for the time being to forget about anything else and help the Government in its problems pertaining to the Communist Party and the Communist Party leaders.

Q. You were not doing anything else at the time anyway, were you?

A. No. My intention was to come to the Government and tell them everything about the Communist Party and then go my own way and establish new paths of life, and it seemed I couldn't do it, my desires were not carried
456 out, not fulfilled, because of these problems.

Mr. Abt: If the Court please, I move to strike this out.

The Court: Strike it out.

Just answer the questions.

By Mr. Abt:

Q. Now, what arrangements were made about pay for you in the early part of 1951 in this conversation you had with the F. B. I.?

A. I was getting $25 a day the days I worked.

The Court: He asked you for the conversation.
Mr. Abt: Yes, I asked for the conversation.
The Witness: I didn't get that.
Mr. Abt: Let me withdraw that question.

457 By Mr. Abt:

Q. As I understand you, Mr. Witness, you say you had a conversation with somebody connected with the FBI about compensation some time early in 1951, is that right?

A. That is correct.

Q. Where did that conversation take place?

A. At Foley Square in New York in the Federal Building.

Q. In the offices of the FBI?

A. Yes.

Q. Whom did you have that conversation with?

A. With a number of people. I think the head of the section there, Mr. Warren Marchisault, and Bruce Crickbaum, and others.

Q. This is the conversation you say you had with them about your compensation and how much you were going to be paid, is that right?

A. No. They told me they might—

Q. Just a moment, Mr. Witness.

I asked you whether you had a conversation with somebody of the FBI with reference to compensation, and you said yes, isn't that right?

A. That is correct.

458 Q. Now we have established that conversation took place in Foley Square at the offices of the FBI early in 1951, is that right?

A. Yes.

Q. And that Mr. Marchisault and somebody else was there, is that right?

A. And others.

Q. And others?

A. Yes.

Q. Now I am asking you what was said at that conversation.

A. That is just exactly what I am trying to say.

They told me—

Q. Yes?

A. —that may knowledge about the Communist Party and the Communist Party leaders and their organization

is wanted by the Government, and for the time being I will have to work with the Government; whatever I had to say about the Communist Party to them will have to be said under oath, and I might as well make up my mind I will have to accept money for my work with the Department of Justice, and on the basis of that I agreed to accept money from the Department of Justice at this time.

459 The Court: How much?

The Witness: I was getting $20 a day.

By Mr. Abt:

Q. Now, Mr. Witness, I think you said a few moments ago you appeared as a witness in a proceeding before the Board of Regents in New York, is that right?

A. That is correct.

Q. I cross-examined you there, do you remember?

A. I do remember.

Q. You recall I asked you what was said about compensation in this first discussion you had with the FBI about compensation? Do you recall my asking you that question?

A. Yes.

Q. You do recall it?

A. No, I don't recall it but I know the problem was raised.

Q. You don't recall my asking you the question?

A. No.

Q. So you don't remember your answer, is that right?

A. That is correct.

Q. Do you remember when that hearing took place?

A. I beg your pardon?

460 Q. Do you remember when that hearing took place, what year?

A. Yes, in 1953 in the spring of early in the spring, February or thereabouts.

Q. 1953?

A. Yes.

Q. That is right?

A. Yes.

Q. About two years ago, is that right?

A. Yes.

Q. Now I will ask you, Mr. Witness, whether in that hearing I asked you the following questions and whether you made the following answers:

"Q. So what was said when this question of compensation was raised?

"A. I have no recollection of it.

"Q. You don't remember at all what was said?

"A. No."

Were you asked those questions and did you make those answers, Mr. Witness?

A. Yes, I could have, yes.

Q. Now, you answered in response to the Judge's question that an arrangement was made finally that you
461 were to get $20 a day, is that right?

A. That is correct.

Q. By that I take it you mean $20 a day for every day you spent in work of some kind for the FBI, is that right?

A. For the FBI and for the Department of Justice.

Q. In other words, you got paid by the day?

A. Yes.

Q. And not by the week?

A. That is correct.

Q. It wasn't a regular salary?

A. That is correct.

Q. Isn't it true at that time the FBI gave you some money for back pay or for the conferences you had with them prior to 1951?

A. That is correct, because I refused to take money from them for that.

Q. What is that?

A. I refused to take money from the Bureau for that.

Q. But in January your resistance was finally broken down and you did take money?

A. Yes, if you want to put it that way.

Q. How much were you given for back pay?

462 A. I don't recall now.

Q. You don't recall?

A. No.

Q. How long did you continue to get paid at the rate of $20 a day every day you worked?

A. Until I went to Washington in 1951.

Q. When in 1951?

A. That was in the spring of 1951.

Q. In the spring of 1951?

A. That is correct.

Q. At that time you also started working for the Criminal Division of the Department of Justice, is that right?

A. That is correct.

Q. What was your arrangement for compensation with the criminal Division of the Department of Justice?

A. I was getting a five-day week.

Q. You were getting a five-day week?

A. Yes, a five-day week.

463 By Mr. Abt:

Q. How much were you being paid?

A. $125 a week, except for those days I didn't work.

Q. Let's put it another way: you were getting $25 a day, isn't that right?

A. I had an understanding with the Department for a five day week, but there were times when I didn't go in for certain days, so I didn't get paid.

So on that basis I was getting $25 a day.

Q. That would be $25 they were paying you, and there was a guaranty of five days a week?

A. No, there was no guaranty, there was just an understanding. I have no contract or anything of that sort.

Q. So you got a five dollar raise when you went down to Washington, is that right, $5 a day, isn't that right?

A. Yes.

Q. In addition to the $25 a day that you get—I will withdraw that question.

What is your present arrangement with the Department of Justice?

A. The same arrangement, $25, five days.

464 Q. $25 a day?

A. Yes.

Q. And five days a week?

A. Yes.

Q. You have been drawing your $125 a week from the Department of Justice from the spring of 1951 to the present time, is that right?

A. Except when I go on my vacation or when I am away from the Department I don't get paid for those days.

Q. You don't get paid for vacation?

A. That's right.

Q. In addition to this $25 a day—I will withdraw that question.

Where is your station, your home base?

A. In New York City.

Q. In New York City?

A. Yes.

Q. In addition to this $25 a day do you get an expense allowance?

A. Yes, I get a per diem of $9 when I am not in New York.

Q. That is $9 when you are out of New York?

A. That is correct.

465 Q. That of course is in addition to your other allowance?

A. Well, I get a "TR".

Q. That is, you get traveling expenses?

A. Yes.

Q. So you are not out-of-pocket yourself for your transportation expense?

A. That is correct.

Q. That $9 is in addition to your transportation expense?

A. Yes.

Q. You spent some time in Hawaii, did you?

A. Yes, there was a case out there and I did spend some time out there.

Q. How long did you spend out there?

A. Approximately two months.

Q. Two months?

A. Yes.

Q. How much did you get for expenses when you were out there?

A. I got my $25 a day.

Q. How much for expenses?

A. $11, I think it is, outside of the territory, of the Continent of the U. S.

466 Q. So you got $11 a day for expenses out there?

A. Yes.

The Court: The jury will remember your instructions that I have given you on more than one occasion.

Mr. Marshal, we will stand adjourned until Monday morning at 10:00.

(Whereupon an adjournment was taken until Monday, January 17, 1955, at 10:00 o'clock A. M.)

467 **Before Hon. Philip L. Sullivan, Judge and a Jury.**

Monday, January 17, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Appearances:

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, By: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Esq., Special Assistant to the Attorney General, on behalf of the Government.

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

468 Thereupon the following further proceedings were had herein:

(Thereupon the following proceedings were had in open court, out of the presence and hearing of the jury:)

Mr. Abt: It has come to our attention that yesterday evening Mr. Parsons made a broadcast over Station WBBM dealing with this case. I did not hear the broadcast, neither did Mr. Crockett. Our information as to what he said comes only secondhand.

Mr. Parsons: May I add, I did not either.

Mr. Abt: May I finish? At this time I would simply like to make an observation and a request. My observation would be that in a criminal case on trial it is quite improper for a prosecutor as it would be for counsel for the defense to discuss the case publicly outside of the courtroom. I submit to your Honor that is particularly true in a case of this kind which involves political questions that have excited the passion and prejudice of the community, which is inevitably to be reflected on the jury.

My request, your Honor, is that Mr. Parsons furnish
469 your Honor and ourselves with a copy of his broadcast, so that we may see it and determine whether we wish to take any further action with reference to it.

Mr. Parsons: I will be very glad to, if there was a broadcast. I did not hear any, did not know of any.

Mr. Abt: You did not make a broadcast?

Mr. Parsons: No. I made a recording, which may have been used, but it was carefully monitored, I am sure, in such a way that it would in no way reflect on the case. It occurs to me it has been of long standing. It was merely reciting some of the problems the Government must meet in any Smith Act case.

The Court: I don't think that should be done. I don't think there should be any recording, or otherwise. You submit to counsel here the copy of that recording.

Mr. Parsons: I will secure it and submit it to your Honor.

The Court: All right.

Mr. Abt: Thank you, Judge.

470 (The following proceedings were had in open court in the presence and hearing of the jury:)

The Court: You may proceed.

Mr. Abt: If your Honor please, before Mr. Parsons proceeds I have a motion I should like to address to the Court.

In examining the transcript of the testimony Friday, your Honor, we find that we neglected to state one ground of our objection to the testimony of the witness Lautner, and I should therefore this morning like to make a motion to strike his testimony, his opinion testimony, with reference to the principles, aims and objectives of the Communist Party, and I make that motion, if your Honor please, on the ground that the aims and objectives or the teachings and advocacies of the Communist Party as an organization are not at issue in this proceeding. The issue is the teaching and advocacy of the members of the Communist Party and Mr. Lightfoot's knowledge of such teachings and advocacies by the members.

Under the law, if your Honor please, the teaching
471 and advocacy of the Communist Party, whatever it may be, cannot be imputed to the members of the organization merely by virtue of their membership, in the absence of evidence the members have participated in, authorized it or ratified it after knowledge thereof.

In view of those circumstances we submit the testimony of the witness Lautner as to the advocacy and teachings and aims is wholly irrelevant to any issue in this proceeding, and move to strike it on that ground.

Mr. Parsons: If your Honor please, the same objection was made by counsel for the defendant at the end of the opening statement, the Government's opening statement and we rely on the same answer made to that objection that was made by the Government at that time.

The Court: Motion denied.

Mr. Abt: May we come to the bench?

The Court: Yes.

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Abt: In view of your Honor's ruling we would
472 now request the Court to make the following statement to the jury:

"The Court has permitted the witness Lautner to give an opinion concerning the meaning of Marxism-Leninism and the aims and objectives of the Communist Party. You are instructed, however, that the opinion of this witness is not to be imputed to this defendant, and cannot be regarded by you as evidence of the opinion of this defendant or his evidence of the defendant's knowledge concerning the meaning of Marxism-Leninism or the aims and objectives of the Communist Party."

473 Mr. Parsons: I have three statements to make about that:

One, it is an instruction that in due course of time we will be confronted with on the matter of instructions to the jury, and I think the remainder of the case, the instructions as to the proof should not be made prior to the placing of that proof in evidence, by instruction which would in its very nature cut off certain evidence the Government would have a right to put in evidence.

I also state an instruction as such is a misconception of the law as applicable to this case.

Mr. Abt: May I say just a word in response?

The Court: Beg pardon?

Mr. Abt: May I say just a word in response?

Mr. Parsons: I would like to add the third point. I am very sorry.

Mr. Abt: Sure.

474 Mr. Parsons: The third is the question of the weight to be given to the opinion witness's statement. It is a question of fact for the jury, anyway, and his competence to have that opinion, so to speak, and the materiality of it

to the case, and the jury will be properly instructed in due course.

Mr. Abt: As I understand it, Mr. Parsons, this testimony is being offered for a limited purpose, the limited purpose being to establish the aims and objectives of the Communist Party. Mr. Parsons so stated in chambers the other day, and he so stated in his opening statement, that the case was to be divided into two parts as to the defendant and, second, evidence as to the defendant's knowledge.

Now, since on Mr. Parsons' own statement, the testimony is being offered for that limited purpose it seems to me at this time that your Honor should so advise the jury and advise them of the limited purpose for which the evidence is being offered and limited at the time.

475 Mr. Parsons: I wish it were possible for the Government to so accept counsel's own statement as to how the case is to be tried. We could then ask the Court and jury merely to take the testimony of prior cases, trials, but your Honor sustained the indictment only on the ground we must prove what we are seeking to prove.

The Court: I think the request is premature. Motion denied.

476 (The following proceedings were had in open court in the presence and hearing of the jury:)

Mr. Parsons: May it please the Court, at the end of the last session of these proceedings the Government made a tender into evidence, and your Honor was about to rule on the tender, and counsel for the defendant asked leave to examine the pages over the weekend in order to familiarize himself with them, before your Honor should rule on the admissibility.

The weekend has now transpired and counsel has had the opportunity to so examine them and we now ask that these particular passages so recited in our tender Friday be admitted into evidence.

Mr. Abt: If your Honor please, we object to the offer. We object first on all of the grounds on which we based our objection and motion to strike the opinion testimony of the witness Lautner.

We further object to the offer, if the Court please,
477 on the ground that what is offered here are a series of isolated excerpts from the volumes in question offered, as I understand counsel's theory, to support the opinion

testimony of the witness as to the meaning of Marxism-Leninism.

We submit, if your Honor please, that Marxism-Leninism cannot be understood from these isolated excerpts.

As Mr. Parsons stated in his opening, and as the facts are, your Honor, the principles of Marxism-Leninism are embodied in a great body of literature, some of which was written a hundred years ago, in which they are contained in large numbers of books filling thousands and thousands of pages, dealing with a wide diversity of subjects, history, philosophy, science, et cetera, and we submit that it is impossible to try that body of doctrine on the basis of isolated excerpts from certain books.

I think it is possible, your Honor, to prove anything on the basis of carefully selected excerpts, and I will only call your Honor's attention to an example I am sure you
478 will recall in recent months in the course of the hearings before the House committee on Educational Foundations, when Congressman Hayes of Ohio, I believe it was to show how you can use a process of excerpts asked of a witness, and questioning with reference to excerpts, where he made the quotation of excerpts from the Papal encyclical, without telling the witness where it was from, and the witness reacted by saying, "That is obviously a piece of Communist propaganda."

I cite that, your Honor, only so as to show it is possible to prove anything by excerpts, and the offer of the witness' testimony as to the meaning of Marxism-Leninism, by the witness or anybody else by the process of reading these isolated excerpts, anything can be proven. You just can't try a great body by this process.

479 Mr. Parsons: May it please the Court, counsel has raised or named three objections. The first one is the same he has repeated from the beginning, in his objection to the Government's opening statement.

I rely upon the same ground we relied on in opposing that objection at that time.

The second is that these pages constitute isolated excerpts from the document rather than the entire document.

I submit, your Honor, that earlier in these proceedings counsel objected to the admission of all the documents or the entire documents into evidence.

The position thus taken contradicts the position first taken, objecting to the submission of the entire document,

and he is now objecting to the submission in evidence of excerpts from the documents.

This is, in common parlance, what is called having one's cake and eating it at the same time, and it constitutes an inconsistent position which we ask the Court not to join in with.

The defendant also has the opportunity, as he has in any other case, to present his own expert witness who
480 may testify as to his own interpretation of those documents or pages, if the case goes to the defense, which gives him full opportunity to meet that matter later, because the testimony of such witness and the weight of that testimony is a question of fact to be left to the jury.

The Court: Your objection—

Mr. Abt: I should just like to reply to counsel's statement that I am trying to have my cake and eat it. I don't think that is the fact here.

Mr. Parsons: I used the common parlance, and I should like to withdraw it at this time.

Mr. Abt: I don't care whether it is a common wording or a carefully worded phrase. I am talking about my position, which I maintain is not inconsistent.

Your Honor will recall when the question of the entire book came up it was said that neither the jury nor your Honor could conceivably have the opportunity to read them.

We object to the excerpts on the ground they could not be fair interpretation of the books, and so the whole thing boils down to the fact that it is just impossible for
481 the jury to attempt to try the body of a doctrine in this case in the course of a criminal case, and for the reasons I have stated earlier we believe this body of doctrine is not in issue in this case, and therefore should not be tried in this case.

The Court: Your objection will be overruled. The documents may be admitted, the pages, and of course the books will be available to the defendant's counsel for whatever use he may desire to make of them.

Mr. Parsons: We will keep them always in the courtroom, your Honor.

Mr. Abt: Do I understand that the books or, rather, the passages, are being admitted in evidence for the limited purpose of what bearing they may have if any on the opinion testimony of the witness, since that is the purpose for which they were offered?

The Court; At this time, yes.

Proceed.

482 Mr. Parsons: Now may it please the Court, the Government would like and asks leave to tender certain additional documents, pages of documents into evidence, the ruling on which was reserved by your Honor until there should be on the stand a witness during whose testimony the Government would choose to read those documents to the jury.

That witness properly is on the stand after the completion of cross-examination by counsel.

If your Honor recalls, I believe it was Thursday morning or Wednesday afternoon of last week when we qualified certain exhibits on the testimony of the witness Frank Straus Meyer, we qualified them both as to relevancy to the issue of the aims and purposes of the Communist Party and the issue of the knowledge of the defendant as to what those aims and purposes would be. We at that time tendered them only as to the knowledge of the defendant as to what those aims and purposes would be.

We proposed to tender them at that time as to the aims and objectives because we had first not had testimony direct from the witness stand as to what the aims and objectives were, and second, because we didn't at that time have a witness on the stand during the course of
483 whose testimony we were to read those documents, if permitted to, into evidence to the jury.

I asked the Court, and quite ineptly, I suppose, because I should have worded it much more carefully, if your Honor would remember the testimony of the witness, quite correctly and in deserved reprimand your Honor stated, I believe the quote is, we can't erase his testimony from the record.

Those exhibits in certain respects are duplicitous, your Honor, of the exhibits which have now already been admitted into evidence, so we would want to tender only those parts of the exhibits and those exhibits which are not duplicitous.

I might read them, if your Honor will permit, and we make this tender:

We offer into evidence now to be marked as Government's Exhibits, first, Exhibit 22. That is "The History of the Communist Party of the United States", pages 2—

Mr. Abt: I am sorry, Mr. Parsons; that is "The His-

tory of the Communist Party of the Soviet Union", I am sorry for interrupting you.

Mr. Parsons: Thank you, Counsel.

We offer from that Exhibit 22, pages 2, 9, 32 to 34,
484 70 to 72, 81, 111, 133 to 134, 149 to 151, 159, 170 to 171, 180, 183, 188, 192, 195, 198, 204 to 205, 208, 223, 224, 231, 267, 274, 275; further we offer to be marked as Government's Exhibit 21, "Problems of Leninism", in addition, pages 16 to 18, 44 to 45, and page 66;

Government's Exhibit 41 "What Is To Be Done", pages 8, 105 to 106, pages 157 to 158, and page 163.

From Government's Exhibit, 25 "Left Wing Communism; An Infantile Disorder", pages 7, 12, 16, 29, 38, 59, 66 to 67, 70, 74 to 75, and 80.

485 In addition to this, your Honor, the witness qualified for entry into evidence the entire file entitled "The Communist Manifesto" which is Government's Exhibit for identification marked 1-A.

Mr. Abt: Your Honor, I just don't understand Mr. Parsons' procedure here.

He had the witness on the stand on Friday, the witness Lautner, who testified that in coming to his conclusion on the meaning of Marxism Leninism he relied on certain passages from certain books.

Mr. Parsons then offered those passages. Your Honor admitted them here this morning for the limited purpose of the bearing they might have on the witness' opinion.

Now Mr. Parsons steps up and says, "While we have this witness on the stand, we want to introduce a lot of other passages and some other books" on the theory that he now has a witness on the stand who is an expert, as I gather it. But the expert has not testified with reference to those books or those additional passages.

Now, it is true that a previous witness, the witness
486 Meyer, did testify that the defendant had read those books, and on the basis of that testimony Mr. Parsons made an offer at the time the witness Meyer was on the stand.

We objected to that offer, your Honor, on the ground that the mere fact that the defendant had read the books was not a sufficient foundation for their offer in evidence, and your Honor sustained that objection.

Now the fact that as of this moment Mr. Parsons has a so-called "expert witness" on the stand does not advance

him one iota in the tender of these books because there has not been another word said, your Honor, since the time that Meyer was on the stand with reference either to the books—the new books he is now referring to or the new passages he is now offering.

I just don't understand on what theory that is being done.

He said that material which your Honor previously excluded should now be admitted.

Mr. Parsons: A point of correction, your Honor.

I believe the record shows that counsel's objection to our tender at that time was not sustained by the Court
487 but that the Court's ruling on the offer was reserved, and I believe that the record will show that the reason it was reserved was that the Government itself was not ready at that time to read those documents into evidence and did not propose to read them during the course of the testimony of the witness Meyer.

I believe the witness Meyer testified that these were documents which dealt with the theory of Marxism Leninism.

At that time we had no definition before the jury of what Marxism Leninism was, we had no explanation to the jury that the aims and purposes and the principle upon which the Communist Party of the United States operates is that defined in the principles of Marxism Leninism.

The witness has also testified that these documents were used by him in connection with the "History of the Communist Party of the Soviet Union" in the course of a series of discussions with the defendant in which they were attempting to outline a new procedure for reintegrating the theory of Marxism Leninism in their teaching course in the light of the new book.

488 I believe that our recitation of the record is in accordance with the actual fact.

The Court: Well, this witness you have on the stand hasn't identified those documents, has he?

Mr. Parsons: He has not identified all of the pages of these particular documents, your Honor.

He has done this:

He has testified to facts which corroborate the identification set out by witness Meyer, and witness Meyer identified them.

I believe that the record will show that we did tender

them at that time for a limited purpose, for the purpose of showing the knowledge of the defendant of what the aims and objectives were, that he would know if he studied and worked with his instructor or supervisor on those courses.

Those courses dealt with Marxism Leninism.

We have placed in evidence the fact that the principle of the aims and objectives of the Communist Party is that enunciated in the theory of Marxism Leninism.

The connection thus bridges the point where these documents, we feel, are fully qualified for both purposes,
489 for the purposes of setting forth the aims and objectives and of showing the knowledge of the defendant.

The Court: They may be received.

Mr. Abt: I would just like to say, your Honor, that I don't understand how you can prove a man's knowledge by the kind of algebraic equation that Mr. Parsons is now contending for.

490 Mr. Parsons: I feel, your Honor, that knowledge is proved by what a person reads and learns.

I submit that whatever I may know now is a result of my reading, studying and thinking. I see no other way it can be done.

The Court: They may be received.

Mr. Abt: We have a technical problem, then, if your Honor please. Mr. Parsons indicated certain passages to us on Friday which he intended to read to the jury.

We looked at them, and our problem then, your Honor, is what in addition, if anything, we want to read to the jury.

We looked them over the weekend, and it is very difficult to know just what paragraphs Mr. Parsons plans to read. That is, he gave us page numbers, but we don't know at what point of the page he plans to begin and at what point he plans to end.

It may well be we may want to have read or agree to have read the paragraph before or the paragraph after.

Now we are confronted with some additional material we simply have not had a chance to go over in that
491 fashion, and my suggestion would be, your Honor, that we take a sufficient recess so that it—

Is it now your plan to read to the jury at this point, Mr. Parsons?

Mr. Parsons: We could, or we could proceed with

your cross examination until you have completed with this witness, either one.

I do realize counsel has a very correct point.

We don't intend to read all of the pages. Where sometimes there are two pages, 169 and 170, it may be just one sentence continuing from one page to the other. We shall be very glad to give counsel that information as to all of the exhibits so he might actually meet that.

It won't take but ten or fifteen minutes.

Mr. Abt: If that is done, your Honor, and we want something further read on the same page, I assume we can agree as to what Mr. Parsons will read to the jury, and it will simplify matters if we do it that way.

Mr. Parsons: We will be very happy to do so, your Honor.

492 Mr. Abt: The only question is how we proceed now until that is done.

I would be perfectly willing to go ahead with my cross examination of the witness, your Honor, if Mr. Parsons has completed with the examination for all purposes.

On the other hand, if he is going to ask him some questions in the course of the reading, obviously I want to defer my cross.

The Court: What is the fact?

Mr. Parsons: Perhaps, your Honor, it would be better for us to read to the jury these exhibits while the Government does have your Honor's permission to have the witness on the stand for that purpose.

We could take ten minutes, and could give counsel that information.

The Court: Pardon?

Mr. Parsons: If we could have ten minutes, we could give counsel the information he desires.

The Court: The jury may recess for a few minutes.

(Whereupon a recess was had.)

493 (The following proceedings were had in open court out of the presence and hearing of the jury:)

The Court: These exhibits should have been submitted on Friday also, instead of taking up time now.

Mr. Parsons: I believe we can proceed to the noon recess.

Mr. Abt: I don't think we are ready.

The Court: Bring in the jury.

Mr. Abt: I don't think we are ready to proceed be-

cause we haven't yet been advised what the Government intends to read. We have been advised with reference to one book so far, and with reference to that book, there are a couple of additional paragraphs that we want to suggest the Government read.

Mr. Parsons: Only one book? I thought you had four.

Mr. Abt: No. Mr. O'Donnell has given us two books, and one book—

Mr. Crockett: He hasn't given us three.

Mr. Abt: We have completed our work on one book, and on the second book we haven't.

494 Mr. O'Donnell: As you know, your Honor, we supplied the defendants a considerable time previous to the trial a list of the pages that we are now in the process of going through to pick out specific spots in these specific pages, and we can do that very quickly over the lunch hour.

I think we have enough to proceed on at this time; however, it took a good deal of time, of course, originally to get the page listings to the defendant prior to the trial, and I feel that in itself was sufficient. I think they are well aware of what is on these pages, and so forth, but we will complete giving it to them at noon.

I think the reading we have now will take up a little time, and I think that we will pin point any other passages very quickly.

Mr. Abt: Here is the problem, your Honor: they did give us the pages, of course, but now we find that they are not reading the complete page, they are reading selections from the page. Now we have looked at only one of the books so far as to what they proposed to read, and in that book I would like to make a suggestion to the Government, which they may accept or reject, I don't know, that they read additional paragraphs on the

495 same page which are connected up with and explain the particular paragraph that they propose to read.

Now we have completed our work on one of the books, but—

Mr. O'Donnell: On three.

Mr. Abt: I am sorry, we have completed examining the portions which they now say they are going to read of one of the books, and if you can give us one moment with them to determine whether they are willing to read the additional paragraphs that we suggest, we could proceed with that particular book before the jury.

The Court: Go ahead.

(Discussion had outside the record.)

The Court: Are you ready to proceed?

Mr. Abt: Give us just a moment, your Honor. Counsel wants to read from two books, and I am trying to check the second one.

We have this problem, your Honor, which I am calling to Mr. Parsons' attention now, and that is the fact that in some cases they are reading a sentence, skipping three or four sentences, and then reading another sentence from the same paragraph.

496 I am asking him to read the entire paragraph. You can't excerpt a portion of a paragraph to read to the jury and then skip to the last few lines.

Mr. Parsons: We are trying, of course, to limit the amount of reading to the bare minimum. Counsel on his own examination will have an opportunity to put in any other passages out of the same document, and he may even want to read some of them.

Mr. Abt: I am not talking about the same passages, but if the jury is to make any sense at all out of this reading, it is going to be difficult for them, under the best of circumstances, to read the first sentence and the last sentence of a paragraph and leave out the intervening material. That hardly gives them even a picture of what is in that particular paragraph, and it does us no good at a later stage, after they have forgotten the paragraph entirely, to come back and read it.

497 The Court: I think you ought to read all of it. Are you ready to proceed?

Mr. Parsons: The Government is ready.

Mr. Abt: Will you give us just another moment or two, your Honor? I want to point out to Mr. Parsons the other examples of the same character. It will just take a few minutes.

The Court: Very well.

(Discussion off the record.)

The Court: Are you ready to proceed?

Mr. Abt: Just one other thing, your Honor. We have agreed now on what is to be read from about two of the books, and I would like to ask Mr. Parsons read to the jury or indicate to the jury the date when the particular book was written.

The Court: All right.

Mr. Abt: And if he cares to add the date of the publication of the particular edition, that is all right, but I want him to indicate the date when the particular book was first printed. It will appear from the book itself, of course.

Mr. Parsons: Will I be limited, your Honor, in my preliminary statements, merely to the date? May I also add certain other facts concerning the book?

498 The Court: Well, what do you mean by "other facts?"

Mr. Parsons: The fact that this is a volume which has been testified to as being one which contains the doctrine and principles as it has been taught to the members of the Communist Party.

Mr. Abt: I would object to that, your Honor; the testimony is whatever the testimony was.

The Court: I think so. I don't think that you should add anything to it.

Are you ready to proceed?

Mr. Parsons: We are ready to proceed, your Honor.

The Court: Bring the jury in.

(Whereupon the jurors took their seats in the jury box, and the following proceedings were had in the presence and hearing of the jury:)

Mr. Parsons: May it please the Court, defendant's counsel, ladies and gentlemen of the jury:

We now have been given leave of the Court to read to you certain passages of documents which have been entered into evidence.

The first passage is to be found at pages 19 through 22 of the book entitled "Problems of Leninism" by Joseph Stalin.

499 This passage is being read from the "Little Lenin Library, Volume 19," which is copyrighted in 1934 by the International Publishers Company, Incorporated, printed in the United States.

500 The excerpt from which we are reading was originally written by Joseph Stalin for publication January 25, 1926; the edition we have is the 1934 edition, and it reads as follows:

"Can such a radical transformation of the old bourgeois system of society be achieved withouta violent revolution, without the dictatorship of the proletariat?

"Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourge-

ois democracy, which is adapted to the domination of the bourgeoisie, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution.

"It is necessary to insist on this all the more strongly, all the more categorically, since we are dealing with the proletarian revolution which has for the time being triumphed in only one country,
501 a country surrounded by hostile capitalist countries, a country the bourgeoisie of which cannot fail to receive the support of international capital.

"That is why Lenin states that '• • • the liberation of the oppressed class is impossible not only without a violent revolution, *but also without the destruction* of the apparatus of state power, which was created by the ruling class • • •.'" (Collected Works, Vol. XXI, Book II, p. 155. Also State and Revolution, Little Lenin Library, p. 9.)

" 'First let the majority of the population, while private property is still maintained, that is while the power and oppression of capital are maintained, declare itself for the party of the proletariat. Only then can it, and should it, take power. That is what is said by *petty-bourgeois democrats who call themselves 'socialists' but are really the henchmen of the bourgeoisie.* (My italics.—J. S.)
502 "'*But we say:* Let the revolutionary proletariat first overthrow the bourgeois break the yoke of capital, break up the bourgeois state apparatus. Then the victorious proletariat will speedily gain the sympathy and support of the majority of the toiling non-proletarian masses by satisfying their wants at the expense of the exploiters. (My italics—J. S.) (Collected Works, Vol. XXIV, p. 647, Russian edition.)' "

The Court: Mr. Parsons, is there any need of this witness being on the stand?

Mr. Parsons: Not at this moment, your Honor. Perhaps it would be more comfortable if you were to step down.

The Court: Step down.

Mr. Parsons: Thank you, your Honor.

Going on with the quotes:

" 'In order to win the majority of the population to its side,' Lenin continues, 'the proletariat must first of all

overthrow the bourgeoisie and seize state power and, secondly, it must introduce Soviet rule, smash to pieces the
old state apparatus, and thus at one blow undermine
503 the rule, authority and influence of the bourgeoisie and
of the petty-bourgeois compromisers in the ranks of the non-proletarian toiling masses. Thirdly, the proletariat must *completely and finally destroy* the influence of the bourgeoisie and of the petty-bourgeois compromisers among the *majority* of the non-proletarian toiling masses by the *revolutionary* satisfaction of *their* economic needs *at the expense of the exploiters.*' (Ibid., p. 641,)

"Such are the characteristic symptoms of the proletarian revolution.

"Now, if it be admitted that the dictatorship of the proletariat is the basic content of the proletarian revolution, what then are the fundamental characteristics of the dictatorship of the proletariat?

"Here is the most general definition of the dictatorship of the proletariat, given by Lenin:

"'The dictatorship of the proletariat is not the end of
the class struggle but its continuation in new forms.
504 The dictatorship of the proletariat is the class struggle
of the proletariat which has achieved victory and has seized political power against the bourgeoisie which has been defeated but not annihilated, which has not disappeared, which has not ceased its resistance, which has increased its resistance.' (Ibid., p. 311.)

"Replying to those who confuse the dictatorship of the proletariat with 'popular,' 'elected' and 'non-class' government, Lenin states:

505 "'The class which has seized political power has done
so conscious of the fact that it has seized power alone. This is implicit in the concept of the dictatorship of the proletariat. This concept has meaning only when one class knows that it alone takes political power into its own hands, and does not deceive either itself or others by talk about popular, elected government, sanctified by the whole people.' (Collected Works, Vol. XXVI, p. 286, Russian edition.)

"This does not mean, however, that the rule of this one class, the class of the proletarians, which does not and cannot share this rule with any other class, does not need an alliance with the toiling and exploited masses of other classes for the attainment of its objectives. On the con-

trary. This rule, the rule of the single class, can be firmly established and exercised to the full only by means of a special form of alliance between the class of proletarians and the toiling masses of the petty-bourgeois classes, especially the toiling masses of the peasantry.

"What is this special form of alliance? What does consist of? Does not this alliance with the toiling masses or rather, non-proletarian classes generally contradict the idea of the dictatorship of one class?

"This special form of alliance lies in the fact that the leading force of this alliance is the proletariat, that the leader in the states, the leader within the system of dictatorship of the proletariat is a *single* party, the party of the proletariat, the party of the Communists, which *does not and cannot share* that leadership with other parties."

The next excerpt is from the same book and the same volume, found at page 25, and proceeds as follows:

"The scientific concept, dictatorship—"

Mr. Abt: Will you point out to the jury that that whole matter you are about to read is in quotes:

Mr. Parsons: Yes, this is in quotes.

"'The scientific concept, dictatorship, means nothing more or less than power which directly rests on violence, which is not limited by any laws or restricted by any absolute rules. * * * Dictatorship means—note this once and for all, Messrs. Cadets—unlimited power, resting on violence and not on law. During civil war, victorious power can only be dictatorship.' (Collected Works, Vol. XXV, pp. 441 and 436, Russian edition.)

"But, of course, the dictatorship of the proletariat does not merely mean violence, although there is no dictatorship without violence.

"'Dictatorship,' says Lenin, 'does not mean violence alone, although it is impossible without violence. It likewise signifies a higher organization of labor than that which previously existed.' (Collected Works, Vol. XXIV, p. 30, Russian edition.)

The remaining reading of the passage from this volume is to be found at page 26, and it is as follows:

Mr. Parsons: It is as follows:

"Its quintescence (that is to say, of the dictatorship—J. S.) lies in the organization and discipline of the advanced detachment of the toilers, their vanguard, their sole leader, the proletariat. Its aim is to establish social-

ism, to put an end to the division of society into classes, to make all members of society toilers, to remove the basis for the exploitation of man by man. This aim cannot be achieved at one stroke. It demands quite a protracted period of transition from capitalisim to socialism, because the reorganization of production is a different matter, because time is needed for radical changes in all spheres of life, and because the enormous force of habit of petty-bourgeoise and bourgeois management can be overcome only by long stubborn struggle. That was why Marx spoke of the dictatorship of the proletariat as of a whole period, a period of transition from capitalism to socialism."

510 I propose to read from the next book before we question this witness.

Mr. Abt: That is up to you.

Mr. Parsons: The second volume from which the Government shall read excerpts is the "Little Lenin Library Series, Volume 14", "State and Revolution", by V. I. Lenin, which was written December 13, 1917, I believe.

Is that the date, Counsel?

Mr. Abt: That is right, 1917.

Mr. Parsons: We have before us the Second Edition of International Publishers, Incorporated, beginning with page 9:

"According to Marx, the state could neither arrive nor maintain itself if a reconciliation of classes were possible. But with the petty-bourgeois and Philistine professors and publicists, the state—and this frequently on the strength of benevolent references to Marx!—becomes a conciliator of the classes. According to Marx, the state is an organ of class domination, an organ of oppression of one

511 class by another; its aim is the creation of 'order' which legalizes and perpetuates this oppression by moderating the collisions between the classes. But in the opinion of the petty-bourgeois politicians, order means reconciliation of the classes, and not oppression of one class by another; to moderate collisions does not mean, they say, to deprive the oppressed classes of certain definite means and methods of struggle for overthrowing the oppressors, but to practice reconciliation.

"For instance, when, in the Revolution of 1917, the question of the real meaning and role of the state arose in all its vastness as a practical question demanding immediate action on a wide mass scale, all the Socialist-Revolution-

aries and Mensheviks suddenly and completely sank to the petty-bourgeois theory of 'reconciliation' of the classes by the 'state.'

512 "Innumerable resolutions and articles by politicians of both these parties are saturated through and through with this purely petty-bourgeois and Philistine theory of 'reconciliation.' That the state is an organ of domination of a definite class which cannot be reconciled with its antipode (the class opposed to it)—this petty-bourgeois democracy is never able to understand. Its attitude towards the state is one of the most telling proofs that our Socialist-Revolutonaries and Mensheviks are not Socialists at all (which we Bolsheviks have always maintained), but petty-bourgeois democrats with a near-Socialist phraseology.

"On the other hand, the 'Kautskyist' distortion of Marx is far more subtle 'Theoretically,' there is no denying that the state is the organ of class domination, or that class antagonisms are irreconcilable. But what is forgotten or glossed over is this: if the state is the product of the irreconcilable character of class antagonisms, if it is

513 a force standing above society and 'increasingly separating itself from it,' then it is clear that the liberation of the oppressed class is impossible not only without a violent revolution, but also without the destruction of the apparatus of state power, which was created by the ruling class and in which this 'separation' is embodied."

Our second reading of the same volume is found in pages 19 to 20, and is as follows:

"We have already said above and shall show more fully later that the teaching of Marx and Engels regarding the inevitability of violent revolution refers to the bourgeois state. It cannot be replaced by the proletarian state (the dictatorship of the proletariat) through 'withering away,' but, as a general rule, only through a violent revolution. The panegyric sung in its honor by Engels and fully corresponding to the repeated declarations of Marx (remember the concluding passages of the Poverty of Philos-

514 ophy and the Communist Manifesto, with its proud and open declaration of the inevitability of a violent revolution; remember Marx's Critique of the Gotha Programme of 1875 in which, almost thirty years later he mercilessly castigates the opportunist character of that programme) —this praise is by no means a mere 'impulse,' a mere declamation, or a polemical sally. The necessity of sys-

tematically fostering among the masses this and just this point of view of violent revolution lies at the root of the whole of Marx' and Engels' teaching. The neglect of such propaganda and agitation by both the present predominant social-chauvinist and the Kautskyist currents brings their betrayal of Marx' and Engels' teaching into prominent relief.

The abolition of the proletarian state, i. e., of all states, is only possible through withering away."

"Marx and Engels gave a full and concrete exposition of these views in studying each revolutionary situation
515 separately, in analyzing the lessons of the experience of each individual revolution. We now pass to this, undoubtedly the most important part of their work."

516 Our next reading is from page 23 of the same volume, and it goes on, by agreement of counsel, to the end of the section on page 24.

"The overthrow of bourgeois rule can be accomplished only by the proletariat, as the particular class, which, by the economic conditions of its existence, is being prepared for this work and is provided both with the opportunity and the power to perform it. While the capitalist class breaks up and atomises the peasantry and all the petty-bourgeois strata, it welds together, unites and organizes the town proletariat. Only the proletariat—by virtue of its economic role in large scale production—is capable of leading all the toiling and exploited masses, who are exploited, oppressed, crushed by the bourgeoisie not less, and often more, than the proletariat, but who are incapable of carrying on the struggle for their freedom independently.

"'The doctrine of the class struggle, as applied by Marx to the question of the state and of the Socialist Revo-
517 lution, leads inevitably to the recognition of the political rule of the proletariat, of its dictatorship, that is to say, of a power shared with none and relying directly upon the armed force of the masses. The overthrow of the bourgeoisie is realizable only by the transformation of the proletariat into the ruling class, able to crush the inevitable and desperate resistance of the bourgeoisie, and to organize, for the new economic order, all the toiling and exploited masses.

"The proletariat needs a power, the centralized organization of force, the organization of violence, both for the purpose of crushing the resistance of the exploiters and

for the purpose of guiding the great mass of the population—the peasantry, the petty-bourgeoisie, the semi-proletarians—in the work of organizing Socialist economy.

"By educating a workers' party, Marxism educates the vanguard of the proletariat, capable of assuming power and of leading the whole people to Socialism, of
518 directing and organizing the new order, of being the teacher, guide and leader of all the toiling and exploited in the task of building up their social life without the bourgeoisie and against the bourgeoisie. As against this, the opportunism predominant at present breeds in the workers' party representative of the better-paid workers, who lose touch with the rank and file, 'get along' fairly well under capitalism, and sell their birthright for a mess of pottage, that is to say, renounce their role of revolutionary leaders of the people against the bourgeoisie.

" 'The state, that is to say, the proletariat organized as the ruling class'—this theory of Marx's is indissolubly connected with all his teaching concerning the revolutionary role of the proletariat in history. The culmination of this role is proletarian dictatorship, the political rule of the proletariat.

"But, if the proletariat needs the state, as a special
519 form of organization of violence against the capitalist class, the following question arises almost automatically: Is it thinkable that such an organization can be created without a preliminary breakup and destruction of the state machinery created for its own use by the bourgeoisie? The Communist Manifesto leads straight to this conclusion, and it is of this conclusion that Marx speaks when summing up the experience of the revolution of 1848 to 1851."

The next reading is from page 33 of the same volume:

"It thus appears that one principal and fundamental lesson of the Paris Commune was considered by Marx and Engels to be of such enormous importance that they introduced it as a vital correction into the Communist Manifesto.

"It is most characteristic that it is precisely this vital correction which has been distorted by the opportunists, and its meaning, probably, is not known to nine-tenths, if not ninety-nine-hundredths, of the readers of the Communist Manifesto.

520 "We shall deal with this distortion more fully further on, in a chapter devoted specially to distortion.

It will be sufficient here to note that the current vulgar 'interpretation' of Marx's famous utterance quoted above consists in asserting that Marx is here emphasizing the idea of gradual development, in contradistinction to a seizure of power, and so on..

"As a matter of fact, exactly the opposite is the case. Marx's idea is that the working class must break up, shatter the 'readymade state machinery,' and not confine itself merely to taking possession of it.

"On April 12—"

Mr. Abt: That was the end of the reading.

Mr. Parsons: I thought you wanted to insist on going on.

Mr. Abt: No.

Mr. Parsons: There are two further readings from this volume:

521 There are further readings, two further readings from this volume, your Honor.

Page 52 begins and continues as follows:

"In order that the true sense of his fight against the Anarchists might not be perverted, Marx purposely emphasizes the 'revolutionary and transitional form' of the state necessary for the proletariat. The proletariat needs the state only for a while. We do not at all disagree with the anarchists on the question of the abolition of the state as an aim. We maintain that, to achieve this aim, temporary use must be made of the instruments, means and methods of the state power against the exploiters, just as the dictatorship of the oppressed class is temporarily necessary for the annihilation of classes."

That was the whole of that.

And our final reading from page 53 is as follows:

Mr. Abt: Have you called the jurors' attention to the fact that what you are now reading from is a quotation from Engels?

522 Mr. Parsons: Yes, thank you.

This next is a quotation within Lenin's volume from Engels:

"'Have these gentlemen ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifles, bayonets, cannon, i. e., by highly authoritative means, and the victorious party is inevitably forced to maintain its supremacy by means of that fear which its arms inspire in the reaction-

aries. Would the Paris Commune have lasted a single day had it not relied on the authority of the armed people against the bourgeoisie? Are we not, on the contrary, entitled to blame the Commune for not having made sufficient use of this authority? And so: either—or—either the anti-authoritarians do not know what they are talking about, in which case they merely sow confusion; or they do know, in which case they are betraying the cause of
523 the proletariat. In either case they serve only the interests of reaction.' "

This constitutes the readings from the volume by Lenin "State and Revolution."

Do you have "Foundations of Leninism"?

Mr. Abt: Yes.

Mr. O'Donnell: Your Honor, while they are consulting, I might ask Mr. Crockett if it would be permissible that the reporter take these exhibits that have just been read from?

Mr. Crockett: No objection.

524 Mr. Parsons: We shall read now from Government Exhibit 19 which is in evidence, "Foundations of Leninism", by Joseph Stalin, the exhibit which is the 1939 copyright of International Publishers Company, Incorporated.

This book was written—counsel, you will have to help me with the date.

Mr. Abt: Look at the note on the flyleaf. It was a series of lectures delivered April, 1924.

Mr. Parsons: April, 1924, thank you.

Our first reading is from page 10:

"What, then, in the last analysis, is Leninism?

"Leninism is Marxism of the era of imperialism and of the proletarian revolution. To be more exact, Leninism is the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular."

From pages 20 to 22, as follows:

"II Method.

"I have already said that between—"

Mr. Abt: Will you call attention to the page on
525 each occasion, Mr. Parsons, for the record, the page from which you are reading?

Mr. Parsons: This is pages 20 to 22, entitled "II.", part "II." "Method."

That reads as follows:

"I have already said that between Marx and Engels, on the one hand, and Lenin, on the other, there lies a whole period of domination of the opportunism of the Second International. For the sake of exactitude I must add that it is not formal domination of opportunism I have in mind, but only its actual domination. Formally, the Second International was headed by 'faithful' Marxists, by the 'orthodox'—Kautsky and others. Actually, however, the main work of the Second International followed the line of opportunism. The opportunists adapted themselves to the bourgeoisie, because of their adaptive, petty-bourgeois nature; the 'orthodox,' in their turn, adapted themselves to the opportunists in order to 'preserve unity' with them, to preserve 'peace within the party.' As a result,
526 opportunism dominated; for there always proved to be a link between the policy of the bourgeoisie and the policy of the 'orthodox.'

"This was the period of the relatively peaceful development of capitalism, the pre-war period, so to speak, when the catastrophic contradictions of imperialism had not yet become so glaringly evident, when workers' economic strikes and trade unions were developing more or less 'normally,' when election campaigns and parliamentary parties yielded 'dizzying' successes, when legal forms of struggle were lauded to the skies, and when it was thought that capitalism would be 'killed' by legal means—in short, when the parties of the Second International were vegetating and there was no inclination to think seriously about revolution, about the dictatorship of the proletariat, or about the revolutionary education of the masses.

527 "Instead of an integral revolutionary theory there were contradictory theoretical postulates and fragments of theory, which were divorced from the actual revolutionary struggle of the masses and had degenerated into threadbare dogmas. For the sake of appearances, Marx's theory was mentioned, of course, but only to rob it of its living, revolutionary spirit.

"Instead of a revolutionary policy there was flabby philistinism and sober political bargaining, parliamentary diplomacy and parliamentary scheming. For the sake of appearances, of course, 'revolutionary' resolutions and slogans were adopted, but only to be pigeonholed.

"Instead of training the party and teaching it correct

revolutionary tactics by helping it learn from its own mistakes, there was a studied evasion of acute questions, which they glossed over and veiled. For the sake of appearances, of course, they were not averse to talking about the
528 acute questions, but only to wind up with some sort of 'elastic' resolution.

"Such was the physiognomy of the Second International, its method of work, its arsenal.

"Meanwhile, a new period of imperialist wars and of revolutionary battles of the proletarian was approaching. The old methods of fighting were proving obviously inadequate and impotent in fact of the omnipotence of finance capital.

"It became necessary to overhaul the entire activity of the Second International, its entire method of work, and to drive out all philistinism, narrow-mindedness, political scheming, renegacy, social-chauvinism and social-pacifism. It became necessary to examine the entire arsenal of the Second International, to throw out all that was rusty and antiquated, to forge new weapons. Without this preliminary work it was useless embarking upon war against capitalism. Without this work the proletarian ran the risk of finding itself inadequately armed, or even
529 completely unarmed, in the future revolutionary battles.

"The honor of bringing about this general overhauling and general cleansing of the Augean stables of the Second International fell to Leninism.

"Such were the conditions under which the method of Leninism was born and hammered out.

"What are the requirements of this method?

"First, the testing of the theoretical dogmas of the Second International in the crucible of the revolutionary struggle of the masses, in the crucible of living practice—that is to say, the restoration of the disturbed unity between theory and practice, the healing of the rift between them; for only in this way can a truly proletarian party armed with revolutionary theory be created.

"Second, the testing of the policy of the parties of the Second International, not by their slogans and resolu-
530 tions (which cannot be trusted), but by their deeds, by their actions; for only in this way can the confidence of the proletariat masses be won and deserved.

"Third, the reorganization of all Party work on new

revolutionary lines, with a view to training and preparing the masses for the revolutionary struggle; for only in this way can the masses be prepared for the proletarian revolution.

531 "Fourth, self-criticism inside the proletarian parties, their education and training by their learning from their own mistakes; for only in this way can genuine cadres and genuine leaders of the Party be trained.

"Such is the basis and substance of the method of Leninism."

From page 44 of this same volume, we read as follows:

"To proceed. Formerly, their victory of the revolution in one country was considered impossible, on the assumption that it would require the combined action of the proletarians of all or at least of a majority of the advanced countries to achieve victory over the bourgeoisie. Now this point of view no longer accords with the facts. Now we must proceed from the possibility of such a victory, for the uneven and spasmodic character of the development of the various capitalist countries under the conditions of imperialism development, within imperialism of catas-
532 trophic contradictions leading to inevitable wars, the growth of the revolutionary movement in all countries of the world—all this leads, not only to the possibility, but also to the necessity of the victory of the proletariat in individual countries. The history of the Russian Revolution is direct proof of this. At the same time, however, it must be borne in mind that the overthrow of the bourgeoisie can be successfully accomplished only when certain absolutely necessary conditions exist, in the absence of which there can be even no question of the proletariat taking power."

Page 45 and page 46:

"But the overthrow of the power of the bourgeoisie and establishment of the power of the proletariat in one country still does not mean that the complete victory of socialism has been ensured. After consolidating its power and taking the peasantry in tow, the proletariat of the victorious country can and must build up a socialist society.

But does this mean that it will thereby achieve the
533 complete and final victory of socialism, i. e., does it mean that with the forces of only one country it can finally consolidated socialism and fully guarantee that country against intervention and, consequently, also against

restoration? No, it does not. For this the victory of the revolution in at least several countries is needed. Therefore, the development and support of revolution in other countries is an essential task of the victorious revolution. Therefore, the revolution in the victorious country must regard itself not as a self-sufficient entity but as an aid, as a mean of hastening the victory of the proletariat in other countries.

"Lenin expressed this thought in a nutshell when he said that the task of the victorious revolution is to do 'the utmost possible in one country for the development, support and awakening of the revolution in all countries.' (Selected Works, Vol. VII, p. 182.)

"These, in general, are the characteristic features of
534 Lenin's theory of proletarian revolution."

From page 48—I beg your pardon, your Honor, just a moment, if I may.

The Court: The jury may recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock P. M. of this day, Monday, January 17, 1955.)

535 Before Hon. Philip L. Sullivan, Judge, and a Jury.

Monday, January 17, 1955, 2:00 o'clock P. M.

Court met pursuant to recess.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government.

Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

536 Mr. Parsons: Continuing from the "Foundations of Leninism", pages 54 through 56.

Mr. Abt: Starting at page 53?

Mr. Parsons: 54. Oh, we will go back to it.

Mr. Abt: On the written order you agreed to read the second as well as the first.

Mr. Parsons: Pages 53 through 56:

"Briefly: the dictatorship of the proletariat is the rule—unrestricted by law and based on force—of the proletariat over the bourgeoise, a rule enjoying the sympathy and support of the labouring and exploited masses. (The State and Revolution.)

"From this follows two main conclusions:

"First conclusion: the dictatorship of the proletariat cannot be 'complete' democracy, democracy for all, for the rich as well as for the poor; the dictatorship of the proletariat 'must be a state that is democratic in a new way—
for the proletarians and the propertyless in general—
537 and dictatorial in a new way—against the bourgeoise.'
(Lenin, Selected Works, Vol. VII, p. 34.) The talk of Kautsky and Co. about universal equality, about 'pure' democracy, about 'perfect' democracy, and the like, is but a bourgeoise screen to conceal the indubitable fact that equality between exploited and exploiters is impossible. The theory of 'pure' democracy is the theory of the upper stratum of the working class, which has been broken in and
is being fed by the imperialist robbers.

538 "It was brought into being for the purpose of concealing the ulcers of capitalism, of touching up imperialism and lending it moral strength in the struggle against distorted masses. Under capitalism there are no real 'liberties' for the exploited, nor can there be, if for no other reason than that the premises, printing plants, paper supplies, et cetera, indispensable for the actual enjoyment of 'liberties' are the privileges of the exploiters. Under capitalism the exploited masses do not, nor can they, really participate in the administration of the country, if for no other reason than that, even under the most democratic regime, governments, under the conditions of capitalism, are not set up by the people but by the Rothschilds and Stinneses, the Rockefellers and Morgans. Democracy under capitalism is capitalist democracy, the democracy of the exploiting minority, based on the restriction of the rights of the exploited majority and directed against this major-
ity. Only under the dictatorship of the proletariat are
539 real 'liberties' for the exploited and real participation
in the administration of the country by the proletarian and peasants possible. Under the dictatorship of the proletariat, democracy is proletarian democracy, the democracy of the exploited majority, based upon the restriction

of the rights of the exploiting minority and directed against this minority.

"Second conclusion: The dictatorship of the proletariat cannot arise as the result of the peaceful development of bourgeois society and of bourgeois democracy; it can arise only as the result of the smashing of the bourgeois state machine, the bourgeois army, the bourgeois bureaucratic machine, the bourgeois police.

"In a preface to The Communist Manifesto Marx and Engels wrote, quoting from The Civil War in France:

" 'The working class cannot simply lay hold of the ready-made state machine and wield it for its own purposes.' (Marx, Selected Works, Vol I, p. 190.)

540 "In a letter to Kugelmann (1871) Marx wrote that the task of the proletarian revolution is 'no longer as before, to transfer the bureaucratic military machine from one hand to another, but to smash it, and that is a preliminary condition for every real people's revolution on the Continent.' (Marx, Selected Works, Vol. II, p. 528.)

Going on:

"Marx' qualifying phrase about the Continent gave the opportunists and Mensheviks of all countries a pretext for proclaiming that Marx had thus conceded the possibility of the peaceful evolution of bourgeoise democracy into a proletarian democracy, at least in certain countries outside the European Continent (England, America). Marx did in fact concede that possibility, and he had good grounds for conceding it in regard to England and America in the 'seventies of the last century, when monopoly capitalisim and imperialism did not yet exist, and

541 when these countries, owing to the special conditions of their development, had as yet no developed militarism and bureaucracy. That was the situation before the appearance of developed imperialism. But later, after a lapse of thirty or forty years, when the situation in these countries had radically changed, when imperialism had developed and had embraced all capitalist countries without exception, when materialism and bureaucracy had appeared in England and America also, when special conditions for peaceful development in England and the United States had disappeared—then the qualification in regard to these countries necessarily could no longer hold good.

" 'Today,' said Lenin, 'in 1917, in the epoch of the first great imperialist war, this qualification made by Marx

is no longer valid. Both England and America, the greatest and the last representatives in the whole world of Anglo-Saxon 'liberty', in the sense that militarism
542 and bureaucracy were absent, have slid down entirely into the all-European, filthy, bloody morass of military-bureaucratic institutions to which everything is subordinated and which trample everything under foot. Today, both in England and in America, the 'preliminary condition for every real people's revolution' is the smashing, the destruction of the 'ready-made state machine' (brought in those countries, between 1914 and 1917, to general 'European' imperialist perfection).' (Selected Works, Vol. VII, p. 37.)

543 "In other words, the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world.

"Of course, in the remote future, if the proletariat is victorious in the most important capitalist countries, and if the present capitalist encirclement is replaced by a socialist encirclement, a 'peaceful' path of development is quite possible for certain capitalist countries, whose capitalist, in view of the 'unfavourable' international situation, will consider it expedient 'voluntarily' to make substantial concessions to the proletariat. But this supposition applies only to a remote and possible future. With regard to the immediate furture, there is no ground whatsoever for this supposition.

"Therefore, Lenin is right in saying: 'The pro-
544 letarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one' (Selected Works, Vol. 7, p. 124).

From the same volume, page 48: "The fundamental question of revolution is the question of power." (Lenin.) Does this mean that all that is required is to assume power, to seize it? No, it does not mean that. The seizure of power is only the beginning. For many reasons, the bourgeoisie that is overthrown in one country remains for a long time stronger than the proletariat which has overthrown it. Therefore, the whole point is to retain power, to consolidate it, to make it invincible. What is needed to attain this? To attain this it is necessary to

carry out at least the three main tasks that confront the dictatorship of the proletariat 'on the morrow' of victory:

"(a) to break the resistance of the landlords and capitalists who have been overthrown and expropriated by
545 the revolution, to liquidate every attempt on their part to restore the power of capital;

"(b) to organize construction in such a way as to rally all the laboring people around the proletariat, and to carry on this work along the lines of preparing for the liquidation, the abolition of classes;

"(c) to arm the revolution, to organize the army of the revolution for the struggle against foreign enemies, for the struggle against imperialism.

"The dictatorship of the proletariat is needed to carry out, to fulfil these tasks."

546 From page 57 of this same volume:

"The victory of the dictatorship of the proletariat signifies the suppression of the bourgeoise, the smashing of the bourgeoise state machine, and the substitution of proletarian democracy for bourgeoise democracy. That is clear. But by means of what organizations can this colossal task be carried out? The old forms of organization of the proletariat, which grew up on the basis of bourgeoise parliamentarism, are inadequate for this task—of that there can hardly be any doubt. What then, are the new forms of organization of the proletariat that are capable of serving as the grave diggers of the bourgeoise state machine, that are capable not only of smashing this machine, not only of substituting proletarian democracy for bourgeoise democracy, but also of becoming the foundation of the proletarian state power?

"This new form of organization of the proletariat is the Soviets.

547 "Wherein lies the strength of the Soviets as compared with the old forms of organization?

"In that the Soviets are the most all-embracing mass organizations of the proletariat, for they and they alone embrace all workers without exception.

"In that the Soviets are the only mass organizations which embrace all the oppressed and exploited, workers and peasants, soldiers and sailors, and in which the vanguard of the masses, the proletariat, can, for this reason, most easily and most completely exercise its political leadership of the mass struggle.

"In that the Soviets are the most powerful organs of the revolutionary struggle of the masses, of the political actions of the masses, of the insurrection of the masses—organs capable of breaking the omnipotence of finance capital and of its political appendages."

Now pages 103 to 104 of the same volume:

"What is the difference between revolutionary tac-
548 tics and reformist tactics?

"Some think that Leninism is opposed to reforms, opposed to compromises and to agreements in general. This is absolutely wrong. Bolsheviks know as well as anybody else that in a certain sense 'every little helps,' that under certain conditions reforms in general, and compromises and agreements in particular, are necessary and useful.

"'To carry on a war for the overthrow of the international bourgeoise,' says Lenin, 'a war which is a hundred times more difficult, protracted and complicated than the most stubborn of ordinary wars between states, and to refuse beforehand to manoeuvre, to utilize the conflict of interests (even though temporary) among one's enemies, to refuse to temporise and compromise with possible (even though transient, unstable, vacillating and conditional) allies—is not this ridiculous in the extreme?
549 Is it not the same as if in the difficult ascent of an unexplored and heretofore inaccessible mountain we were to renounce beforehand the idea that at times we might have to go in zigzags, sometimes retracing our steps, sometimes giving up the course once selected and trying various others?' (Selected Works, Vol. X, p. 111.)"

550 And our final reading from this book, page 109:

"The party as the vanguard of the working class.

"The Party must be, first of all, the vanguard of the working class. The Party must absorb all the best elements of the working class, their experience, their revolutionary spirit, their selfless devotion to the cause of the proletariat. But in order that it may really be the vanguard, the Party must be armed with revolutionary theory, with a knowledge of the laws of the movement, with a knowledge of the laws of revolution. Without this it will be incapable of directing the struggle of the proletariat, of leading the proletariat. The Party cannot be a real party if it limits itself to registering what the masses of the working class feel and think, if it follows in the tail of the spontaneous

movement, if it is unable to overcome the inertness and the political indifference of the spontaneous movement, if it is unable to rise above the momentary interests
551 of the proletariat, if it is unable to elevate the masses to the level of the class interests of the proletariat. The Party must stand at the head of the working class; it must see farther than the working class; it must lead the proletariat, and not follow in the tail of the spontaneous movement. The parties of the Second International, which preach 'Khvostism,' are vehicles of bourgeois policy, which condemns proletariat to the role of a tool in the hands of the bourgeoisie. Only a party which takes the standpoint of the vanguard of the proletariat and is able to elevate the masses to the level of the class interests of the proletariat—only such a party can divert the working class from the path of trade unionism and converge it into an independent political force. The Party is the political leader of the working class."

Government Exhibit 8, which is in evidence, "The Communist Manifesto" by Carl Marx and Friedrich
552 Engels. This was published January 30, 1888.

Mr. Abt: 1848 originally. What you are looking at is a late preface, Mr. Parsons.

Mr. Parsons: Counsel would know.

Mr. Abt: I believe you said in your opening that is correct, it was written originally in 1848.

Mr. Parsons: On these dates I will gladly accept counsel's correction.

Page 44:

"The Communists disdain to conceal their views and aims. They openly declare that their ends can be attained only by the forcible overthrow of all existing social conditions. Let the ruling classes tremble at the Communist Revolution. The proletarians have nothing to lose but their chains. They have a world to win.

"Workingmen of all countries, unite!"

553 Mr. Abt: What are you going to next?

Mr. Parsons: The History—

Mr. Abt: Give us a list of additional readings you are going to do in addition to what you advised us before lunch, please.

Mr. Parsons: Suppose we will read the ones we advised you first, and later on we will read the others as you have had a chance to review them.

Page 167 and 168—

Mr. Abt: Mr. Parsons, I wonder if you would call the attention of the jury to the date when this particular edition was published, the date on which the book was written, and then in reading the various passages call the jurors' attention to the period of Russian History to which it refers, which you will find at the top of the book in each case, do you get my point?

Mr. Parsons: I got all of your point. Some of it is quite pointed; the rest of it I feel is beyond the Government's case.

"History of the Communist Party of the Soviet Union (Bolsheviks)," Second Course, copyrighted—

Mr. Abt: "Short Course" not "Second Course."

554 Mr. Parsons: Thank you, Counsel, "Short Course."

Copyrighted 1939 Edition, International Publishers Company, Incorporated.

Since my copy does not contain the date on which this was actually written, I will rely on counsel for the defense for those facts.

Page 167 and page 168:

"The Bolsheviks—"

Mr. Abt: Mr. Parsons, again may I ask whether you would call the jury's attention to the period with which this section deals, which appears right at the top of your page?

Mr. Parsons: I will be very glad to do so.

This obviously, since it is the History of the Communist Party of the Soviet Union, beginning with the birth of its history in 1883 and carrying through to the conclusion of the book after 1937, this is that part of the book which is devoted to the period between 1914 and 1917, entitled "Theory and Tactics of the Bolshevik Party on the Question of War, Peace and Revolution."

"The Bolsheviks were not mere pacifists who sighed for peace and confined themselves to the propaganda of

555 peace, as the majority of the Left Social-Democrats did. The Bolsheviks advocated an active revolutionary struggle for peace, to the point of overthrowing the rule of the bellicose imperialist bourgeoisie. The Bolsheviks linked up cause of peace with the cause of the victory of the proletarian revolution, holding that the surest way of ending the war and securing a just peace, a peace without annexations and indemnities, was to overthrow the rule of the imperialist bourgeoisie.

"In opposition to the Menshevik and Socialist-Revolutionary renunciation of revolution and their treacherous slogan of preserving 'civil peace' in time of war, the Bolsheviks advanced the slogan of 'converting the imperialist war into a civil war.' This slogan meant that the laboring people, including the armed workers and peasants clad in soldiers' uniform, were to turn their weapons against their own bourgeoisie and overthrow its rule if they wanted to put an end to the war and achieve just peace.

"In opposition to the Menshevik and Socialist-
556 Revolutionary policy of defending the bourgeois fatherland, the Bolsheviks advanced the policy of 'defeat of one's own government in the imperialist war.' This meant voting against war credits, forming illegal revolutionary organizations in the armed forces, supporting fraternization among the soldiers at the front, organizing revolutionary actions of the workers and peasants against the war, and turning these actions into an uprising against one's own imperialist government.

"The Bolsheviks maintained that the lesser evil for the people would be the military defeat of the tsarist government in the imperialist war, for this would facilitate the victory of the people over tsardom and the success of the struggle of the working class for emancipation from capitalist slavery and imperialist wars. Lenin held that the policy of working for the defeat of one's own imperialist government must be pursued not only by the Russian Revolutionaries, but by the revolutionary parties of
557 the working class in all the belligerent countries.

558 "It was not to every kind of war that the Bolsheviks were opposed. They were only opposed to wars of conquest, imperialist wars. The Bolsheviks held that there are two kinds of war:

"(a) Just wars, wars that are not wars of conquest but wars of liberation, waged to defend the people from foreign attack and from attempts to enslave them, or to liberate the people from capitalist slavery, or, lastly, to liberate colonies and dependent countries from the yoke of imperialism; and

"(b) Unjust wars, wars of conquest, waged to conquer and enslave foreign countries and foreign nations.

"Wars of the first kind the Bolsheviks supported. As to wars of the second kind, the Bolsheviks maintained that

a resolute struggle must be waged against them to the point of revolution and the overthrow of one's own imperialist government."

559 A further recitation from the History of the Communist Party of the Soviet Union (Bolsheviks) in "The Conclusion" beginning at page 353:

"What are the chief conclusions to be drawn from the historical past traversed by the Bolshevik Party?

"What does the history of the C.P.S.U. (B.) teach us?

"(1) The history of the Party teaches us, first of all, that the victory of the proletarian revolution, the victory of the dictatorship of the proletarian, is impossible without a revolutionary party of the proletarian, a party free from opportunism, irreconcilable towards compromises and capitulators, and revolutionary in its attitude towards the bourgeose and its state power.

"The history of the Party teaches us that to leave the proletariat without such a party means to leave it without revolutionary leadership; and to leave it without revolutionary leadership means to ruin the cause of
560 the proletarian revolution.

"The history of the Party teaches us that the ordinary Social-Democratic party of the West-European type, brought up under conditions of civil peace, trailing in the wake of the opportunists, dreaming of 'social reforms,' and dreading social revolution, cannot be such a party.

"The history of the Party teaches us that only a party of the new type, a Marxist-Leninist party, a party of social revolution, a party capable of preparing the proletarian for decisive battles against the bourgeoise and of organizing the victory of the proletarian revolution, can be such a party.

"The Bolshevik Party in the U.S.S.R. is such a party."

On page 354:

"But matters have changed radically with the dawn of the new period. The new period is one of open class collisions, of revolutionary action by the proletarian, of
561 proletarian revolution, a period when forces are being directly mustered for the overthrow of imperialism and the seizure of power by the proletarian. In this period the proletarian is confronted with new tasks, the tasks of reorganizing all party work on new, revolutionary lines; of educating the workers in the spirit of revolu-

tionary struggle for power; of preparing and moving up reserves; of establishing and allied with the proletarians of neighboring countries; of establishing firm ties with the liberation movement in the colonies and dependent countries, etc., etc. To think that these new tasks can be performed by the old Social-Democratic parties, brought up as they were in the peaceful conditions of parliamentarism, is to doom oneself to hopeless despair and inevitable defeat. If, with such tasks to shoulder, the proletarian remained under the leadership of the old parties it would be completely unarmed and defenceless.
562 It goes without saying that the proletariat could not consent to such a state of affairs."

Page 355:

"The history of the Party further teaches us that a party of the working class cannot perform the role of leader of its class, cannot perform the role of organizer and leader of the proletarian revolution, unless it has mastered the advance theory of the working-class movement, the Marxist-Leninist theory."

At the bottom of the same page:

"Mastering the Marxist-Leninist theory means assimilating the substance of this theory and learning to use it in the solution of the practical problems of the revolutionary movement under the varying conditions of the class struggle of the proletariat."

Page 356—

Mr. Abt: I understood, Mr. Parsons, that you had withdrawn page 356 the other day on the ground you had not served us with notice of it. But go ahead, read it
563 anyhow.

Mr. Parsons: Would you choose I read it, sir?

Mr. Abt: Pardon?

Mr. Parsons: Would you choose I read it? I don't have the markings which indicates that.

Mr. Abt: If you care to, I don't care.

Mr. Parsons: (Reading)

"The Marxist-Leninist theory is not a dogma but a guide to action."

That is the only sentence on 356.

From page 363:

564 Mr. Abt: I don't believe you gave us that reference previously, but we have no objection to your reading it.

Mr. Parsons: Thank you, Counsel.

This is the concluding sentence of the entire volume:

"Such are the chief lessons to be drawn from the historical path traveled by the Bolshevik Party."

That will constitute the readings at this time from this volume. There may be readings at a later date.

This next is from: Left Wing Communism; An Infantile Disorder" by V. I. Lenin, Government Exhibit 23, which is in evidence.

This is a publication copyrighted in 1940 by the International Publishers Company, Incorporated, printed in the United States of America.

I believe that was written in 1920, is that right?

Mr. Crockett: That is right.

Mr. Parsons: April 27, 1920.

The first page reads:

565 "During the first months of the conquest of political power by the proletariat in Russia (November 7, October 25, 1917); it might have appeared that the present differences between backward Russia and the advanced countries of western Europe will cause the proletarian revolution in these latter countries to have very little resemblance to ours. Now we already have very considerable international experience which very definitely establishes the fact that some of the fundamental features of our revolution have a significance which is not local, not peculiarly national, not Russian only, but international. I speak here of international significance, not in the broad sense of the term: Not some, but all fundamental and many secondary features of our revolution are of international sifinificance in the sense of the influence it has upon all countries. I speak of it in the narrower sense, i. e., by international significance I mean the international significance or the historical inevitability of a repeti-

566 tion on an international scale of what has taken place here, and it must be admitted that some of the fundamental features of our revolution possess such international significance."

Reading from page 29 of the same volume:

"The dictatorship of the proletariat is a persistent struggle—sanguinary and bloodless, violent and peaceful, military and economic, educational and administrative—against the forces and tradition of the old society. The force of habit of millions and tens of millions is a terrible

force. Without an iron party steeled in the struggle, without a party enjoying the confidence of all who are honest in the given class, without a party capable of keeping track of and influencing the mood of the masses, it is impossible to conduct such a struggle successfully. It is a thousand times easier to vanquish the centralized big bourgeoisie than to "vanquish" millions and millions of small proprietors, who, by their everyday, imperceptible, elu-
567 sive, demoralizing activity, achieve the very results desired by the bourgeoisie and which restore the bourgeoisie. Whoever in the least weakens the iron discipline of the party of the proletariat (especially during its dictatorship) actually aids the bourgeoisie against the proletariat."

May it please the Court, we would like to cease our reading at this time, and ask some questions of the witness we removed from the stand, but retain it, in order that we might ask those questions in the course of our reading.

The Court: All right.

Mr. Parsons: Will you take the stand, please, Mr. Lautner?

(Witness, John Lautner, resumed the stand.)

By Mr. Parsons:

Q. I show you Government Exhibit 25, from which we just read, on the inside page of which there is "Copyright 1940 by International Publishers, Incorporated, United States of America," and ask you, in the light of your
568 experience, what is "International Publishers"?

Mr. Abt: I object, your Honor.

The Court: I didn't hear the question.

Mr. Parsons: I asked, "What is International Publishers," which is the publishing title in the book.

The Court: What is "International—"

Mr. Parsons: "International Publishers," if he knows.

Mr. Abt: I object, your Honor. The witness is presumably testifying as an expert on opinion matters. Now we have the question, "What is International Publishers," which is both irrelevant and not within the scope of the witness' testimony, as I understand it.

The Court: What is the purpose of it?

Mr. Parsons: Shall I make an offer of proof, your Honor?

The Court: Yes.

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the Jury:)

569 Mr. Parsons: We simply meant this, your Honor: All of the volumes frim which we read are published by International Publishers, except the "History of the Communist Party of the Soviet Union;" the others are from what we know as the "Little Lenin Library," which is published by International Publishers, Incorporated, and that is the official publishing company of the Communist Party of the United States.

The Court: You want to know whether or not—

Mr. Parsons: I just want him to testify to this fact.

Mr. Abt: I think it is immaterial, your Honor, as to who published the books. He referred to the books only for the purpose of indicating the basis for his so-called "expert opinion" with reference to the questions that were asked of him.

For that purpose, it doesn't matter who published them.

Mr. Parsons: I won't press the point, your Honor, because it isn't that strong or that material.

The Court: Very well.

(The following proceedings were had in open court in the presence and hearing of the jury:)

570 By Mr. Parsons:

Q. I show you, Mr. Witness, Government's Exhibit 21, pages 43 and 44 of which we read to the jury—

Mr. Abt: Will you speak a little louder? I have great trouble hearing you.

Mr. Parsons: I am sorry.

Q. Pages 43 and 44 of which we read to the jury, and I will ask you to notice that at the top of page 43 and on page 44 in parentheses the initials "J. S." appear. If you know, what do those initials mean, sir?

A. The italics—"My italics. J. S."—

Q. If you know?

A. Those initials stand for the name of Joseph Stalin.

Q. Now, Mr. Witness, you have heard the Government read excerpts from these documents to which you testified. Were the materials in these documents taught you in the schools that you attended?

Mr. Abt: I object.

The Court: Were they taught you in the school—is that it?

Mr. Parsons: In the schools that he attended.

Mr. Abt: I object, your Honor.

The Court: Well, what schools?

571 Mr. Parsons: In the Communist Party schools which you attended?

The Court: He may answer that.

By the Witness:

A. Yes.

By Mr. Parsons:

Q. Were these materials that were taught by you in the officials schools of the Communist Party?

A. Yes.

Q. You testified that you attended the convention of 1948. Does the Constitution of the 1948 convention dedicate the Communist Party of the United States to these principles to which you testified?

Mr. Abt: I object.

The Court: I don't hear you, Mr. Parsons.

By Mr. Parsons:

Q. You testified that you attended the convention of 1948 and that a Constitution was adopted in that convention?

A. That is correct.

Q. These principles which we have read to the jury, were these principles endorsed by that Constitution?

Mr. Abt: I object, your Honor, on the ground the Constitution is the best evidence.

572 The Court: I think that is true. Sustained.

Mr. Parsons: Counsel is right, your Honor.

The Court: That is already in evidence, isn't it, the Constitution?

Mr. Parsons: It is in evidence in another reference, in another book, but not in this separate form, your Honor. This is not in evidence in a separate form.

By Mr. Parsons:

Q. I show you Government's Exhibit 45 which is marked for identification and ask you if that is the Constitution of '48 to which we referred?

A. Yes, this is the Constitution that was adopted.

Mr. Abt: Just a minute. I submit the witness has answered the question.

The Court: After "Yes," it may go out.

Mr. Parsons: I offer in evidence, your Honor, this document, as it will reduce the amount of other exhibits that we will need to read from.

573 The Court: As what Exhibit?

Mr. Parsons: It will reduce the amount of reading necessary from Exhibit 48.

The Court: Yes, but I say, what is the number of the constitution, what is the Exhibit number?

Mr. Parsons: Exhibit 45, your Honor.

The Court: All right, it may be received.

(Whereupon said document, so offered and received in evidence, was marked GOVERNMENT'S EXHIBIT 45.)

Mr. Abt: We have no objection, your Honor.

By Mr. Parsons:

Q. Now I show you Government's Exhibit 45, which is in evidence, and I will ask you where in that Exhibit are the principles set out in these documents, so dedicated?

Mr. Abt: I object, your Honor. The constitution speaks for itself.

Mr. Parsons: Counsel is right.

The Court: He may answer that.

The Witness: In the first sentence of the preamble on page 3.

By Mr. Parsons:

Q. Would you read that, please?

574 "The Communist Party of the United States is a political party of the American working class, basing itself upon the principles of scientific socialism, Marxism-Leninism."

Mr. Abt: Now, if your Honor please, I move to strike the answer because I think the answer is not responsive to the question, and, as I said before, it is apparent the constitution speaks for itself. If Mr. Parsons had wanted to read that portion of the constitution to the jury, I would have had no objection, but he is trying to characterize it, and I think it is improper.

Mr. Parsons: It is true, I could have read it, but the witness is here and available, and it is in evidence. It could have been read.

The Court: There is no point in the witness reading it.

Mr. Parsons: That is true, your Honor.

Shall I read it into evidence, your Honor?

The Court: You can if you wish.

575 Well, have you read it into evidence?

Mr. Parsons: The witness has read it into evidence, your Honor.

The Court: Well, then, that is sufficient.

Mr. Parsons: Thank you.

By Mr. Parsons:

Q. Now, Mr. Lautner, some of the readings we read contained the statement concerning imperialist governments.

Is the United States Government considered in the light of these readings, an imperialist government?

Mr. Abt: I object, your Honor. First, it is repetitious, the witness has already testified about this; secondly, the documents speak for themselves.

Mr. Parsons: I apologize if the witness has testified; I don't recall his testimony.

The Court: I think he covered that.

Mr. Parsons: He has so testified.

No further questions on the readings at this point.

The Court: All right.

I guess you can proceed with cross-examination.

576 Mr. Abt: I don't want to cross-examine the witness, your Honor, until Mr. Parsons is finished.

The Court: That is what I say, until he is finished.

The witness may step down.

Mr. Parsons: May it please your Honor, the other Exhibits which are in evidence will have a proper setting under the testimony of future witnesses for being read to the jury, and we will surrender the witness to Counsel for cross-examination at this time.

The Court: You have completed your direct examination with the witness Lautner?

Mr. Parsons: With this witness, your Honor, yes.

The Court: The jury may recess for a few moments.

(Whereupon a short recess was taken.)

577 The Court: Bring in the jury.

(Whereupon the jurors took their seats in the jury box, and the following proceedings were had in the presence and hearing of the jury:)

The Court: Proceed.

Cross-Examination by Mr. Abt.

Q. Mr. Witness, you testified on Friday that you began to be paid by the FBI in January 1951, right?

A. That is correct.

Q. And that since the spring of 1951 you have been paid by the Department of Justice at the rate of $25 a day, which is for a five-day week, plus $9 a day for expenses. Is that right?

A. Well, not at the beginning; later on, yes.

Q. Say, starting in the spring of 1951?

A. Somewhere around there, yes.

Q. That is what you testified on Friday, isn't it?

A. Yes.

Q. Will you answer yes or no, so the reporter can hear you. He cannot understand you when you nod your head.

578 The Court: What is the answer?

The Witness: I stated my answer, your Honor. I did state my answer.

The Court: I understand. What is your answer?

The Witness: Yes.

By Mr. Abt:

Q. You gave the FBI and the Department of Justice information about the Communist Party and Communism, did you not?

A. I was in consultation with the Department of Justice and with the FBI.

Mr. Abt: I ask, your Honor, to instruct the witness to answer the question.

The Court: Did you hear the question?

The Witness: I did, your Honor.

The Court: What is your answer?

The Witness: I answered questions to the Department of Justice and the FBI.

By Mr. Abt:

Q. And the questions you were asked were designed to elicit information from you with reference to the Communist Party and Communism, is that not right?

A. In part, yes.

579 Q. Now, Mr. Witness, is it not a fact that when you left the Communist Party you lost all of your close friends?

A. "Close friends"—in quotation marks—one's friendship in the Communist Party is predicated on what one's standing is in the Communist Party. If you are exposed by the Communist Party as the enemy of the Communist Party, you have no friends in the Communist Party. So, therefore, they were not friends.

Mr. Abt: I ask the witness' answer be stricken.

The Court: After this, don't permit the witness to proceed along as he did this time, and then ask to have it stricken out. It will be stricken out.

By Mr. Abt:

Q. You testified before the Subversive Activities Control Board, did you not?

A. Yes.

Q. And that was when?

A. In 1952.

Q. I will ask you whether you were asked the following question and made the following answer in your testi-
580 mony before the Subversive Activities Control Board, transcript page 10,049:

"Q. Your expulsion from the Communist Party resulted in your losing most of your close friends, did it not?

"A. All of them."

Were you asked that question and did you make that answer?

A. Will you please proceed in that transcript. There is some more of that.

Mr. Abt: If your Honor please, I will let the witness look at the transcript, if he wants to read something else on the same question.

The Court: Was that question asked and that answer made?

The Witness: The answer was made to that particular question, your Honor.

The Court: All right. That is an answer to it.

By Mr. Abt:

Q. Some of these friends were people you, yourself, had persuaded to join the Communist Party, isn't that right?

A. It could be.

581 Q. It could be?

A. Yes.

Q. And at the request of the FBI, you gave their names to the FBI and to the Department of Justice, did you not?

A. I don't think so.
Q. You don't think so?
A. No.
Q. You withheld their names from the Department of Justice and FBI?
A. No.
Q. You did not withhold any names?
A. Those persons, individuals—
The Court: The question has been answered. He said no.
The Witness: That is right.

By Mr. Abt:
Q. You withheld no names from the FBI or the Department of Justice?
A. No.
Q. You enjoy your work, don't you?
Mr. Parsons: Object, your Honor.
The Court: Preliminary. He may answer.
582 Mr. Parsons: Whether or not he enjoys his work.
The Court: Preliminary question. He may answer. Answer yes or no.

By the Witness:
A. I do not enjoy my work.

By Mr. Abt:
Q. You do not enjoy your work?
A. No.
Q. When did you stop enjoying your work?
Mr. Parsons: I object, your Honor.
The Court: Sustained.

By Mr. Abt:
Q. Wasn't there a time when you did enjoy your work, Mr. Witness?
Mr. Parsons: I object, your Honor. I don't see the point to which counsel is moving. We did not go into his enjoyment on direct.
Mr. Abt: It goes to bias.
Mr. Parsons: Enjoyment is the result.
The Court: Objection sustained.

By Mr. Abt:
Q. May I call the witness' attention to his previous testimony on the same question?

583 The Court: You mean, whether or not a question was asked and answer made?

Mr. Abt: Yes.

The Court: Well, in view of his former testimony, I think probably you are entitled to it.

By Mr. Abt:

Q. Now, Mr. Witness, you told us the other day that you testified before the New York Board of Regents, did you not?

A. That is correct.

Q. And were you asked the following question, and did you make the following answer in that proceeding:

"Q. Do you enjoy your work?

"A. To tell the truth, I do."

Were you asked that question and did you make that answer?

A. At that time—

Mr. Abt: Just a minute.

The Court: Was that question asked and was that answer made?

The Witness: Yes, but your Honor—

The Court: Wait.

By Mr. Abt:

584 Q. Were you asked the following question and did you make the following answer:

"Q. And you enjoyed particularly your work in Hawaii, did you not?

"A. It was an interesting place, yes. I enjoyed my work there."

Were you asked that question and did you make that answer?

A. Yes, I did.

Q. You are paid, are you, by the day for the work you do?

A. I think I stated that before how I am paid.

Q. That is right. And you know, do you not, that if the testimony you give in this or some other case is not satisfactory to the Department of Justice, they can fire you?

Mr. Parsons: I object.

The Court: The form of the question is bad.

Mr. Parsons: Not within his knowledge.

By Mr. Abt:

Q. You have no Civil Service status, do you, Mr. Witness?

A. No.

585 By Mr. Abt:

Q. Now, when were you first informed your testimony was wanted in this case?

A. When was I first—

Q. Yes, informed that your testimony was desired in this proceeding in this court, before Judge Sullivan?

A. Some time ago. I don't recall the exact date. It was some time ago.

Q. A month ago?

The Court: What is the answer?

By the Witness:

A. I think it was less than a month, I think about two weeks.

Q. About two weeks?

A. Yes.

Q. Who informed you of that fact?

A. The Sectional Chief in the Internal Security Division of the Department of Justice.

Q. Subsequently, did you have any discussion of your testimony in this case with anybody?

A. Well, in a general way.

The Court: Yes, or no.

By the Witness:

A. In a general way, yes.

586 Q. With whom?

A. With the Section Chief of the Smith Act Cases in the Department of Justice.

Q. Did you have any discussions with Mr. Parsons or Mr. O'Donnell about your testimony in this case?

A. About my testimony in this case?

Q. About your testimony in this case, the testimony you gave on Friday.

A. Well, we had a discussion.

Q. When did you have that discussion?

A. Well, we had a general discussion on Wednesday evening, and when was that—Sunday night.

Q. With whom did you have that discussion?

A. With Mr. Parsons.

Q. With Mr. Parsons?
A. Yes.
Q. Did Mr. Parsons indicate the questions he intended to ask you here?
A. No.
Q. He did not?
A. No.
Q. He didn't tell you anything about the questions he was going to ask you here?
A. Well, we discussed together what questions are
587 to be asked.
Q. And together you worked it out, and you and Mr. Parsons, the questions he was going to ask you?
A. No, he worked out his own questions.
Q. Then he did tell you the questions he was going to ask?
A. He worked out his questions after our discussion.
Q. And he told you what questions he was going to ask you?
A. After our discussion?
Mr. Abt: Judge, I believe—

By the Witness:

A. Yes, he said so.

By Mr. Abt:

Q. We will get along much faster, Mr. Witness,—
Mr. Parsons: If the Court please, unless Counsel is directing his questions to some particular point, since it is out of or beyond the scope of direct, unless he has something in view, the only other person who could be a witness in this case to rebut Counsel's question is myself, and I ask that he not proceed further with this kind of examination.
The Court: Okay.

588 By Mr. Abt:

Q. Now, were the questions that Mr. Parsons said he was going to ask you reduced to writing?
A. I don't know.
Q. You don't know. Were the answers that you were going to give here or that you gave here reduced to writing?
A. No.
Q. Do you know a man named Lawrence Bailey?

A. Yes.
Q. Who is he?
A. He is an attorney in the Internal Security Division of the Department of Justice.
Q. He was one of the lawyers for the Department of Justice in the Los Angeles case where you testified, was he not?
A. Yes.
Q. While you were on the witness stand in Los Angeles did you hear Mr. Bailey refer to you as an unindicted co-conspirator?

Mr. Parsons: Your Honor, I object. I fail to see where it is a point at issue or where we went into it on direct examination, and whatever the Government's counsel
589 in that case may have called Mr. Lautner would have nothing to do with this.

I myself have not called him that and, in fact, I have a different opinion altogether.

I don't know what counsel is going after.

The Court: He is entitled to that.

Mr. Parsons: But he is asking the question—

Mr. Abt: It goes to the motive, obviously.

Mr. Parsons: I don't quite see the obviousness.

Mr. Abt: Will the reporter please read the question?

(Question read.)

By the Witness:

A. Whether he called me an unindicted co-conspirator in that case?

By Mr. Abt:

Q. Yes. I am asking you.
A. No, he did not call me an unindicted co-conspirator.
Q. He did not?
A. He did not.
590 Q. Now, Mr. Witness,—

Mr. Parsons: May it please the Court, I submit the proper way to direct the question to the witness on prior testimony is to compare that testimony with testimony in this court elicited on direct examination. I have not gone into that on direct examination, and counsel is now attempting to.

The Court: You don't claim he would be a co-conspirator in this case, do you?

Mr. Abt: Not in this case, no, your Honor.

Mr. Parsons: I don't understand what it is.
Mr. Abt: If you will let me go on?
The Court: O. K.

By Mr. Abt:

Q. Mr. Lautner, were you asked the following question and did you make the following answer in the proceeding before the Board of Regents:

"Q. Now, in the course of your appearance on the witness stand in Los Angeles, isn't it a fact that within your hearing Mr. Lawrence Bailey referred to you as an unindicted co-conspirator in that case?

591 "A. He did."

Were you asked that question and did you make that answer?

A. Yes, he did, but that question and answer is different.

The Court: Wait a minute. Was that question asked you and did you make that answer?

The Witness: Yes, your Honor, and my answer to the previous questions—

The Court: He will take care of that.

592 By Mr. Abt:

Q. Mr. Witness, did you at that time understand what he meant by that phrase, "an unindicted co-conspirator"?

A. No, first of all, no.

Q. That does not answer it, Mr. Witness, but I will accept it.

You know what the word "unindicted" means, don't you, Mr. Witness?

A. Yes.

Q. You understand what the word "co-conspirator" means, don't you?

A. Yes, I do know that, too.

Q. Didn't you know at that time that when you heard Mr. Bailey make that statement Mr. Bailey meant that you were subject to indictment in that Los Angeles case for violation, for conspiracy to violate the Smith Act?

Mr. Parsons: Your Honor—

The Court: I think we are going a little far there.

Mr. Abt: It goes to motive and bias.

The Court: But what he did in that case is not here.

593 Mr. Parsons: We will have to establish something that was said on direct examination in this case.

The Court: I think so, Mr. Abt.

By Mr. Abt:

Q. Now, Mr. Witness, do you consider yourself to be an expert on the meaning of Marxism-Leninism?

A. I do consider myself an expert on the basic aims and objectives of the Communist Party, and on its—

Mr. Abt: Move to strike that as not responsive.

The Court: Yes.

Mr. Abt: Miss Reporter, will you read the question?

(Question read by the reporter.)

The Witness: I don't understand the question as it is put.

Mr. Abt: Just a moment, if you please.

Mr. Parsons: May it please the Court, I believe I will have time while counsel is looking through the record to object.

I recall that the witness has never testified on the stand in this case as to what he considers himself to be. I
594 am the proponent of the witness as an opinion witness, and not he himself.

The Court: What?

Mr. Parsons: He has not testified as to what he himself considers himself to be. The question is beyond the scope of direct examination.

I would be very glad to take the stand and prove to counsel why I think he is, but he has not testified to that.

The Court: Proceed with your cross-examination.

By Mr. Abt:

Q. Mr. Witness, were you not asked the following question by Mr. Parsons last Friday:

"Q. And what is Marxism-Leninism?"

I objected and the Court overruled the objection, and then you proceeded to answer the question. Do you recall that?

A. That is correct.

Q. And in that answer you were testifying, were you not, as to your opinion on the meaning of Marxism-Leninism?

A. As to my opinion on the basic aims and objec-
595 tives of Marxism-Leninism.

Q. Now, do you consider yourself, Mr. Witness, an expert on the basic aims of Marxism-Leninism?

Mr. Parsons: Your Honor, I object.

The Court: He may answer yes or no.

The Witness: Your Honor, I am not an expert on anything.

The Court: All right.

By Mr. Abt:

Q. As a matter of fact, Mr. Witness, haven't you always shied away from being classified as an expert?

Mr. Parsons: I object.

The Court: Well, the form of the question is bad.

By Mr. Abt:

Q. Have you not, Mr. Witness, in your prior appearances on the witness stand made it clear that you were not an expert?

Mr. Parsons: I object, your Honor.

The Court: He may answer that.

By the Witness:

A. Yes, I shied away, because there is only one expert in the Communist movement, and that is J. Stalin.

Mr. Abt: Just a moment.

596 The Court: Strike out the latter part.

By Mr. Abt:

Q. You have made it clear then, Mr. Witness, in your prior testimony that you were not an expert?

Mr. Parsons: I object.

The Court: You said you were not?

The Witness: That is correct. You cannot be an expert in the Communist Party.

597 Mr. Abt: Now, if the Court please, on the basis of the witness' own statement I move to strike his opinion questions on the ground that the witness now disavows being an expert.

Mr. Parsons: May it please the Court, what the witness thinks himself to be is immaterial, but what he is considered by this Court and by those who propose him.

The Court: It is a matter for the jury.

Mr. Abt: It is certainly material whether a man thinks himself an expert when he is called as an opinion witness.

Mr. Parsons: He was not—

The Court: Overruled.

Mr. Abt: As I understand your Honor, you said that was a matter for the jury?

The Court: That is correct.

By Mr. Abt:

Q. Now, Mr. Witness, isn't it true that even people who do consider themselves experts on Marxism-Leninism sometimes disagree as to whether a particular writing or particular statement conforms with the basic principles of Marxism-Leninism?

598 A. Yes. For example, Browder.

Mr. Abt: If your Honor please—

The Court: After "Yes" it may go out. Just answer the questions.

By Mr. Abt:

Q. And isn't it also a fact that some writings on Marxism-Leninism that were regarded as correct when written were later disproved or disavowed by the Communist Party as incorrect or became inadequate?

A. In some instances, yes.

Q. Is it not a fact, Mr. Witness, for example, that the book "A Manual On Organization" by J. Peters was withdrawn from circulation by the Communist Party in 1930?

A. What do you mean by withdrawn? That is a sweeping statement.

Q. That it was no longer distributed to or sold to members, no longer sold in book stores or no longer used?

A. The first part is not true. The part that it was not sold is.

To me it was always available, and to Party leaders it was always available, and they are also members. To the general membership, no.

599 Q. Now, Mr. Witness, weren't you asked the following question and didn't you make the following answer in your appearance before the Board of Regents?

Mr. Parsons: I object, your Honor. To discredit the testimony of a witness under oath comparison must be made with the testimony on direct, and we did not go into that question on direct.

The Court: I don't know what the questions are. You may read them.

600 By Mr. Abt:

Q. (Reading.)

"Q. Now, isn't it a fact that Peters manual was withdrawn from circulation in the late 1930's?

"A. I so stated, yes."

Were you asked that question and did you make that answer?

The Court: Incidentally, that is one of the exhibits that has been marked and introduced?

Mr. Parsons: No, your Honor, we did not introduce it.

Mr. Abt: It has not been introduced. It is on the Government list, to be introduced.

Mr. Parsons: I would be very glad to introduce it, but I didn't, but we anticipated doing that.

The Court: Did you anticipate doing it?

Mr. Abt: The only reason I asked it is it was on the list to be introduced.

The Court: They may not offer it, of course.

Mr. Abt: I assumed it was.

Mr. Parsons: I trust counsel will not cross-examine
601 about further books which have not been introduced.

Mr. Abt: I will cross-examine about one other book.

Mr. Parsons: Which is not introduced, has not been introduced?

Mr. Abt: That is correct, but which is on the list.

Mr. Parsons: I should like to reserve our intention. I think we should have the right to do that.

Mr. Abt: Will the reporter please read the question?

(Question read by the reporter as follows:

"Q. Now, Mr. Witness, weren't you asked the following question and didn't you make the following answer in your appearance before the Board of Regents:

"'Q. Now, isn't it a fact that the Peters manual was withdrawn from circulation in the late 1930's?

"'A. I so stated, yes.'

602 "Were you asked that question and did you make that answer?")

By the Witness:

A. Yes, in addition to other questions pertaining to—

The Court: Wait a minute.

By Mr. Abt:

Q. Now, Mr. Witness, is it not also a fact that the book entitled "Why Communism" by M. Olgin was also withdrawn from circulation in the 1930's?

A. Yes, it was withdrawn.

Mr. Parsons: If the Court please, may we have just a brief, a very brief voir dire on this matter?

Mr. Abt: On what matter?

Mr. Parsons: On the question you have asked.

Mr. Abt: Voir dire? I don't understand. I am not offering it.

The Court: You may go ahead.

Mr. Abt: You will have your redirect.

By Mr. Abt:

Q. Mr. Witness, is it not a fact that during your membership in the Communist Party the Communist Party taught that the practical application of the principles
603 of Marxism-Leninism were at all times dependent on historical and other conditions existing at that particular time and place?

A. Yes, pertaining to tactics.

Mr. Abt: May we have just the answer "Yes," your Honor?

The Court: Yes, that's right.

Mr. Parsons: Your Honor—

The Court: Just a minute.

Answer the question.

The Witness: That is a compound question. I can't answer that question yes or no.

The Court: All right.

Mr. Abt: May I have your exhibit, "Communist Manifesto"?

Mr. O'Donnell: I believe the reporter has that document at the present time, your Honor.

The Court: The reporter has it?

Mr. O'Donnell: Yes, your Honor, using it to transcribe.

Mr. Parsons: Our apologies, your Honor, for not having it here. We should have had that in the court room at all times.

604 That one is with the court reporter who is typing from it in order to type it quickly.

We will send for it immediately if you want to go on with another question.

Mr. Abt: All right, go ahead and take it. If I need it, I will get it from you.

By Mr. Abt:

Q. During your membership in the Communist Party, Mr. Witness, did not the Communist Party also teach not to apply certain passages from Marxist-Leninist writings to any and all situations?

A. As far as tactics are concerned.
Q. Pardon?
A. As far as tactics are concerned.
Mr. Abt: If your Honor please, may we have a yes or no answer?
The Court: Yes.
The Witness: I can't answer that question with a yes or no.
The Court: All right.

By Mr. Abt:

Q. Did not the Communist Party teach that no passage from a Marxist-Leninist writing can apply to any and
605 all situations?
A. Well, that is not—I mean I can't answer that question with a yes or no.
Q. I will ask you, Mr. Witness, if you were not asked exactly the same question when you testified in the Flynn case, the last two questions that I put to you, do you recall whether you were asked those questions in the Flynn case?
A. Yes, but I was given a chance in the Flynn case—
Q. Just a moment, just a moment.
You do remember being asked those questions in the Flynn case?
A. I don't remember.
Q. You don't?
A. No.
Q. Mr. Witness, I have here the transcript of your testimony in the Board of Regents case and I will ask you whether you were asked the following questions and made the following answers in that case:
"Mr. Witness, weren't you asked the following questions and didn't you make the following answers in the Flynn case at page 5265:
606 "Q. You were also taught not to apply certain passages to any and all situations, isn't that right?
"A. That is correct.
"Q. You were taught that no passage can apply to any and all situations, weren't you?
"A. That is correct.
"Q. Were you asked those questions and did you make those answers in the Flynn case?
"A. Yes, but may I also explain that that was in relation to application of Marxism-Leninism, time, and place and given conditions."

Were you asked those questions and did you make those answers?

A. That is correct.

Q. All right. Now, Mr. Witness, was it not the position of the Communist Party from 1945—from 1945 at least until you left it in 1950 that the fundamental issue before the American people was not the choice between capitalism and socialism, but that the fundamental issue was to retain their democratic rights and liberties against the threat of fascism?

607 A. As far as tactics are concerned, yes.

Q. Now may we have everything stricken except—

The Court: As far as what?

The Witness: As far as tactics are concerned, yes.

Mr. Abt: May we have everything stricken except the "Yes", your Honor?

The Court: Yes, strike it.

Mr. Parsons: I wonder, your Honor, if that would be an honest answer to the question. The question was compound and it would be difficult to answer it yes or no, unless he did qualify it.

The Court: I think the question is plain enough. You may ask him when you get on redirect.

By Mr. Abt:

Q. Was it not the position of the Communist Party during this same period that the only way that the American people could prevent the onslaught of fascism would be by forming the widest possible coalition of forces not for the purpose of trying to get socialism but for the purpose of preserving the trade unions, preserving
608 their standards of living and preserving the democratic rights and liberties of the people?

A. In its tactical resolutions, yes.

609 Q. Now you were asked that same question I just asked you out in Hawaii, were you not, Mr. Witness?

A. Well, I don't recall that same question in Hawaii.

Q. Do you recall whether or not you made the same kind of reservation with respect to tactical position when you answered that question out in Hawaii?

A. Well, I know from my knowledge of the aims and objectives of the Communist Party—

Q. Just a moment.

A. Well, you asked me a question, please let me answer it.

Mr. Abt: Will you read the question, Mr. Reporter?
(Question read.)

By the Witness:

A. Well, if it was on Fascism, et cetera, I could have made the same answer as I gave here.

By Mr. Abt:

Q. Well, I will ask you, Mr. Witness, whether you were asked the following questions and made the following answers in the proceeding before the Board of Regents:

"Q. Weren't you asked that question out in
610 Hawaii?

"A. I don't know.

"Q. Your don't know. Were you asked the following questions and did you make the following answers at page 4950, and here is a quotation from your Hawaii testimony:

"'Q. Weren't you taught that the Communist Party takes the position that the only way the American people can prevent the onslaught of brutal Fascism is by forming the widest possible coalition of forces not for the purpose of trying to get Socialism but for the purpose of preserving the existence of trade unions, preserving the standards of living of the American people and preserving the democratic rights and civil liberties of the people?

"'A. Yes, that is set forth in the type of resolution of the Party in 1945 and 1948.'"

Did you not so testify in Hawaii?

A. Yes, those resolutions that—

The Court: That is the answer, "Yes."

611 By Mr. Abt:

Q. Was it not the position of the Communist Party during the period of your membership in the Party after 1945 that the major issue around which a broad people's coalition of this kind could be built was in the fight to prevent war and preserve peace?

A. That was the Communist Party's position, yes.

Q. And was it not also the position of the Communist Party that while supporting the election of a broad people's front of government it would also seek to persuade the American people that ultimately Socialism would be a superior economic system to Capitalism?

A. Is that a question or—

Q. That is a question, and the reporter will read it to you if you don't understand it.

The Court: Do you understand the question?

The Witness: May I have the question, please?

(Question read.)

By the Witness:

A. That was one of their tactical positions, that is correct.

By Mr. Abt:

Q. Was it not also the position of the Communist
612 Party, Mr. Witness, that if Socialism could not be peacefully established in the United States by elections and parliamentary methods, the reason would be that the trusts and the monopolies would try to prevent this by force and violence?

A. That is what the Communist Party said, yes.

Q. Now Mr. Witness, I will show you Defendant's Exhibit 1 for identification, and I will ask you whether you have ever seen it before.

A. I could have seen it.

Q. You could have seen it?

A. Yes.

Q. It was published in 1948, was it not. January of 1948?

A. That is so. It says so here, yes, January 11, 1948.

Q. And you received a copy of it when it was published, did you not?

A. Most likely, yes.

Q. And at the time it was published, it was an authoritative pamphlet as far as the Communist Party was concerned, was it not?

A. Well, in a sense it was.

Q. It was?

613 A. That is correct.

Q. May I have it, please?

A. It was so arranged to be.

Mr. Abt: I move that be stricken.

The Court. Strike it.

Mr. Abt: If your Honor please, I offer Defendant's Exhibit 1 for identification, and I propose to read it to the jury.

The Court: Of course, it isn't your time yet, Mr. Abt, unless he waives it.

Mr. Parsons: I do not waive it.

The Court: It isn't your time to offer it unless he waives it.

Mr. Parsons: I don't waive it.

Mr. Abt: If it is a proper part of my cross examination, your Honor, may I not?

The Court: You cannot offer any documents in evidence on his case.

Mr. Abt: I am sorry, your Honor.

The Court: On your own case, you may.

Mr. Abt: It is a new rule to me.

The Court: I never heard of another rule.

Mr. Parsons: It is an old one, as old as the law books.

614 Mr. Abt: If the document is material on my case?

The Court: Suppose it is. You may examine on it, but the introduction of it is another thing.

Mr. Abt: O. K., your Honor, then I will withhold the offer until my case. Is that what your Honor holds?

The Court: Yes, that is right.

Are you serious, about that, Mr. Abt? You never heard of a rule that the defendant couldn't offer?

Mr. Abt: I certainly am, your Honor, I never heard that the defendant couldn't offer an exhibit.

The Court: On the prosecution's case, I never heard of it otherwise.

Mr. Abt. If it is material to my cross-examination—

615 The Court: If it makes any difference, you may cross-examine on it; but you cannot have it introduced on prosecution's case.

Mr. Abt: It is very difficult to cross-examine if it is not in evidence. The rule I followed on that was you could not cross-examine until the document was in evidence.

The Court: If you show it to the witness once and he says "Yes," then you may have a right to cross-examine on it if it is competent.

Mr. Abt: May I come to the bench with Mr. Parsons, your Honor?

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Abt: I wanted a little instruction on this rule, it is really brand-new to me, your Honor.

The Court: Brand-new? I never heard of it.

Mr. Crockett: It is correct procedure.

The Court: If it is waived by the prosecution.

Mr. Crockett: It wasn't waived before.

616 Mr. Parsons: Otherwise never in a criminal case. A defendant then need never take the stand.

Mr. Crockett: In the New York case, if you will have your secretary look at the transcript, you will find at least fifty per cent of the documents offered by the defense was offered during cross-examination.

Mr. Parsons: Judge Medina made a mistake if that is true.

Mr. Abt: It has been true in every case I have been in.

The Court: It hasn't been true in every case I have been in. I never heard of it.

Mr. Parsons: I was just looking it up last night in Wigmore and confirmed your Honor's position in it.

Mr. Abt: Let me ask you, how may I proceed now?

The witness has testified this is an authoritative document put out by the Communist Party. Is it your ruling there is no way I can now get in any of the contents of the document at this stage?

The Court: Not the contents. You may examine him about it.

Mr. Parsons: Otherwise he would make the witness his own witness, and he would have to accept everything he says as binding upon him.

617 The Court: Because this is something he would never examine about.

Mr. Parsons: That is right, it is beyond the scope of the direct.

Mr. Abt: Let me ask this question:

I take it that the witness, having testified this is an authoritative document of the Communist Party, that when it comes to our case that I may offer it simply on the basis of—

Mr. Parsons: No, you will have to re-establish it.

Mr. Abt: (Continuing)—on the fact its competency has been established by this witness, is that correct?

The Court: Well, I didn't go that far, Mr. Abt. I think with that admission that it has a great deal of bearing on the competency of it, I would say that.

Mr. Parsons: May it please the Court, I recall the witness had some doubt in his answer also as to its be-

ing authoritative. In addition to that, the attempt to introduce that into evidence is so completely beyond the scope of the direct that I have no chance—I mean the Government has no chance on that.

618 The Court: What usually is done, Mr. Abt, is to identify it.

Mr. Parsons: That is all.

The Court: And then at your turn of the case you have a right to offer it, and I will rule on it.

Mr. Abt: O. K.

(The following proceedings were had in open court in the presence and hearing of the jury:)

By Mr. Abt:

Q. Just a couple of other questions, Mr. Witness, about Defendant's Exhibit 1.

This pamphlet was widely distributed in Communist Party circles at the time it was published, was it not?

A. Well, I have no personal knowledge of how widely it was distributed, but it was distributed, I know.

Q. Haven't you testified previously, Mr. Witness, in other cases that this pamphlet was widely distributed in Communist Party circles at the time?

A. Oh, in Commuinst Party circles, yes.

Q. That is the question I asked you, Mr. Witness.

619 Now Mr. Witness, I will show you Defendant's Exhibit 2 for identification. Have you seen that book before?

A. Yes.

Q. It was published in 1949, was it not?

A. Yes, in 1949.

Q. And it is an authoritative presentation of the Communist Party's views on various subjects as of 1949, is it not?

A. The title says "The Twilight—"

Q. I am not asking you for the title.

A. I don't know whether it was authoritative or not. I know it was written by Foster.

The Court: That is the answer.

By Mr. Abt:

Q. You don't know whether it is authoritative or not?

A. No, I don't know. It was written by Foster—

Q. Just a moment, Mr. Witness.

Haven't you testified in previous cases that it was authoritative?

A. Well, I don't know, I don't recall.

Q. You don't know.

620 Well, let me refresh your recollection, Mr. Witness:

I will ask you whether you were asked the following questions and made the following answers in the proceeding before the Subversive Activities Control Board, Mr. Witness:

"Q. Are you familiar with this late book by Foster, 'The Twilight of World Capitalism'?

"A. '1949, I didn't make a study of it. I might have seen it.

"Mr. Abt: Will you show it to the witness, please?

"(A book was handed to the witness.)

"The Witness: I could have read it.

"Mr. Marcantonio: Yes, as a matter of fact, it is an authoritative presentation of the Party's views on various subjects of the days of 1949, was it not written by the chairman of the Party?

"A. Yes."

Were you asked those questions and did you make those answers?

Mr. Parsons: I submit, your Honor, that to discredit the witness the exact question must have had to be

621 asked the witness here, and that is not the question he was just asked.

622 Mr. Abt: That is the exact question I asked him.

"Is it an authoritative presentation of the Party's—"

The Court: He may answer that.

The Witness: It is not the exact question, your Honor, and to this answer I gave that answer at the time.

Mr. Abt: May I ask that be stricken, your Honor, and may I ask the witness to answer the question?

The Court: Yes.

Mr. Parsons: May I ask now, your Honor, that the prior question which was used to discredit the witness be stricken and the answer be stricken because it is not the same question which was asked in the prior testimony?

The Court: He said that he answered that question as it is, but he doesn't say that that is the question that was asked him today.

Mr. Parsons: That is true, that is correct. That is why

I request the prior question he was asked here today be stricken and the answer.

623 By Mr. Abt:

Q. Mr. Witness, I will ask you this question:

Is the book which I showed you, "The Twilight of World Capitalism" an authoritative presentation of the Party's views on various subjects of the days of 1949 written by the Chairman of the Communist Party?

A. Written by the Chairman of the Communist Party, yes.

Q. I still don't understand what the witness has answered, your Honor.

The Court: Is your answer yes?

The Witness: To the last part of the question, that it was written by the Chairman of the Communist Party, the answer is yes.

By Mr. Abt:

Q. And what is your answer to the question as to whether that book is an authoritative presentation of the Party's views?

A. The book doesn't state so.

The Court: Well, what do you say?

The Witness: I say it is at that particular moment in 1949, yes.

624 In 1950 Foster repudiates some of his own statements.

Mr. Abt: Judge, may we strike the last?

The Court: Yes, strike the last.

625 By Mr. Abt:

Q. Now isn't it a fact, Mr. Witness, that what Mr. Foster wrote in that book represented the line of the Communist Party as of that time, 1949?

A. Well, I wouldn't know that.

Q. You wouldn't know that?

A. Yes.

Q. Were you asked the following question, Mr. Witness, and did you make the following answer, with reference to this book, in your testimony before the Subversive Activities Control Board,—the following questions and answers, because there are several of them:

"Q. But as far as the Communist Party is concerned,—I am not talking about your views, but as far as the Com-

munist Party is concerned, this represented the authoritative viewpoint of the Communist Party to members of the Communist Party, did it not?

"A. You ask a member of the Communist Party whether it does or not; I don't know.

"Q. You were a member at that time, 1949, were you not?

626 "A. I stated up until the end of 1949, up until the day of my expulsion I followed the party line.

"Q. So that—

"A. Today is 1952.

"Q. I am asking you as of 1949, at the time that you were a member of the Communist Party, this was the party line, what Mr. Foster wrote, was it not?

"A. Yes.

"Q. Yes?

"A. Yes."

Were you asked those questions, and did you make those answers?

Mr. Parsons: May it please the Court, I object to the question. There has been no foundation laid for this type of question. Counsel has not asked him the same questions that he asked a moment ago, but he proceeded to take a prior transcript of some of the proceedings and lecture to the jury for a full page.

The Court: Well, you are asking about a book now, that—

627 Mr. Abt: It is the same book, your Honor.

Mr. Parsons: What is the one question concerning that book which you have already asked this witness, which you have already asked this witness in a prior hearing? That doesn't come out.

Mr. Abt: I will read you both questions, Mr. Parsons.

I just asked the witness here the following question:

"What Mr. Foster wrote in this book represented the line of the Communist Party as of that time, did it not?"

That is the question I asked him.

Mr. Parsons: Now ask the question from your record.

Mr. Abt: The question from the record that I am asking:

"As of 1949, at the time—

Mr. Parsons: The difference, I submit, is very substantial. There is a difference in the two questions.

Mr. Abt: May I finish, Mr. Parsons?

Mr. Parsons: Yes.

628 Mr. Abt: The question from the transcript I am asking you:

"As of 1949, at the time you were a member of the Communist Party, this was the party line, what Mr. Foster wrote?"

The question I asked the witness was, "What Mr. Foster wrote in this book represented the line of the Communist Party as of that time—" That is, as of 1949. That is precisely the same.

The Court: Well, while he was a member—

Mr. Abt: While he was a member, yes.

The Court: He may answer whether those questions were asked and those answers made.

The Witness: In the record of the Control Board, those questions were asked and I may have given those answers.

The Court: Answer the question.

The Witness: And I answered the question here, too, your Honor.

By Mr. Abt:

Q. All of your testimony before the Subversive Activities Control Board was under oath, was it not, Mr.

629 Witness?

A. That is correct.

Q. Is it not your opinion, Mr. Witness—just a moment, I will withdraw that.

Mr. Abt: Your Honor, I neglected to have this marked in advance. May I have this marked as Defendant's Exhibit 3 for identification?

(Whereupon said document was marked Defendant's Exhibit 3 for identification.)

By Mr. Abt:

Q. I show you Defendant's Exhibit 3 for identification, Mr. Witness, and ask you whether you have seen a copy of that book before?

A. "Copyright 1952." No, I didn't see any of the Communist Party—

Q. I didn't ask you that. I asked you whether you had ever seen a copy of that book before.

A. I saw a copy of it, but I was not in—

The Court: Wait a minute. That is the answer.

By Mr. Abt:

Q. You saw a copy of it before.

630 Have you studied the book?

A. Well, I studied it partly, yes.

Q. You studied it partly.

It represents, does it not, an authoritative statement of the position of the Communist Party as of the time it was written, by the Chairman of the Communist Party?

A. That I wouldn't know.

Q. You would not know?

A. No.

Mr. Abt: Now, if your Honor please, on the basis of the witness' last answer, I move to strike all of the opinion testimony insofar as it relates to the period subsequent to the date on which he left the Party on the grounds that it now appears, from the witness' answer, that he is unable to say whether a publication published subsequent to the date that he left the organization does or does not represent the authoritative position of the Communist Party.

Obviously, if he is unable to say that, he cannot testify as an expert on the position, aims or objectives of the

631 Communist Party subsequent to the date that he left it.

Mr. Parsons: May it please the Court, the question is one which, like many of the questions which have preceded it, have very small and very carefully considered innuendoes in them.

Counsel showed to the witness a book by William Z. Foster, and asked whether or not that book, written by the president of the Communist Party, represented the line.

For the witness to have said "yes," would be for the witness to have admitted that William Z. Foster himself wrote the book. Counsel and I both know that William Z. Foster—it is very likely that he wrote the book.

Mr. Abt: Just a minute, Judge. I didn't understand this testimony on Mr. Parsons' part.

Mr. Parsons: Let m finish.

I don't understand why Counsel is allowed continuously to rephrase and phrase and rephrase questions that

632 are tricky, for the purpose of eliciting yes and no answers from the witness, without allowing the witness to give a full and explanatory answer,—the witness, I am sorry.

The Court: At any rate, your motion is denied.

Mr. Abt: May I indicate, your Honor, the dilemma I am in, if that motion is denied?

On the one hand, the witness testifies as an expert as to the aims and objectives of the Communist Party, subsequent to the date when he left the organization; on the other hand, I am completely unable to cross-examine him on the opinion that he expressed, because he is unable to state whether or not this Exhibit which I presented to him represents a statement, an authoritative statement of the position of the Communist Party as of the date since he left.

The Court: He says that he couldn't answer. That is all there is to it, so far as this witness is concerned.

Mr. Parsons: And as far as the way Counsel pre-
633 sented his question to him, your Honor, it was a question which should not have been asked.

The Court: The ruling stands.

By Mr. Abt:

Q. You say you have studied the contents of this book, Mr. Witness?

A. Some, yes.

Q. What do you mean by "some"?

A. Well, I didn't study it from cover to cover. On certain problems that came up in relation to my work, I used it as a reference book to see what it says.

Q. Did you study that portion of the book in which Mr. Foster states the position—

Mr. Parsons: I object. The book is not in evidence.

The Court: Sustained. The form is bad, so far.

By Mr. Abt:

Q. I direct your attention, Mr. Witness, to pages 554 through 556, to the top of page 557 of this book, and I ask you whether you studied—

Mr. Parsons: I object, unless Counsel intends—
634 The Court: Let him finish the question.

Mr. Abt: Thank you.

By Mr. Abt:

Q. I ask you whether or not you studied those particular pages of this book.

Mr. Parsons: May it please the Court, unless Counsel intends, and has the right to tender that portion of the book into evidence, he is doing by indirection what he has not

a right to do by direction. I feel it is completely out of place. We didn't go into that on direct. This examination is not designed to discredit the witness, there is no position for it, no foundation laid for it, whatsoever.

The Court: Do you have anything further to say?

Mr. Abt: Before you rule on the objection?

The Court: Yes.

Mr. Abt: Yes, your Honor.

This witness, first of all, appears here as an expert, and I believe under the rules I am entitled to quite wide latitude in my cross-examination of him as to the source,
635 basis and nature of his opinion.

The witness testified that in forming the opinion that he did, he took into consideration certain books. It seems to me that on cross-examination I have a right to show whether he took into consideration, or failed to take into consideration, other books, in forming the opinion that he did, and at this point I am particularly now inquiring as to whether or not he took into consideration the material which appears on certain pages of the book which I showed him.

The Court: You may go that far. You may ask him that, the book or pages thereof, either way you want.

Mr. Abt: First, preliminarily, your Honor, I think I am entitled to know whether he studied the particular pages, because obviously he couldn't pass his opinion on them if he didn't see them.

The Court: He said he couldn't base an opinion on them, as I recall his testimony.

Mr. Abt: What he said, your Honor, was that he
636 couldn't state that was an authoritative presentation of the Communist Party's position.

The Court: Yes. I stand corrected.

By Mr. Abt:

Q. Now, Mr. Witness, let me ask you again, did you make a study of pages 554 to the top of page 557 of this book, and the book is Defendant's Number 3 for identification?

The Court: Can you answer the question without reading all of the pages?

The Witness: No, I am just reading that particular excerpt, your Honor.

Mr. Abt: I didn't ask you to read it now, Mr. Witness:

I asked you whether you had previously made a study of those pages of that book.

The Witness: Well, in order to give you an answer, I had to see what is in it.

Whether I made a study of it—yes, I made a study of it. He deals with tactics over here.

Mr. Abt: Just a minute. Just give me the answer yes or no, Mr. Witness.

637 By Mr. Abt:

Q. You did make a study of it?

A. Yes.

Q. Now, Mr. Witness, do those pages represent the authoritative position—withdraw the question.

As of the time that that book was written in 1952, do those pages, or what appears on those pages, represent an authoritative presentation of the position of the Communist Party on the questions which are discussed on those pages?

Mr. Parsons: I object for the same reasons that I stated before, your Honor.

The Court: Objection sustained.

Mr. Parsons: It was not gone into on the government's case.

Mr. Abt: It is sustained?

The Court: Yes.

Mr. Abt: The man is supposed to be an expert, your Honor.

Mr. Parsons: You have to set up your own case, Counsel.

Mr. Abt: Frankly, your Honor, I am not quite clear.

638 You are sustaining the objection because it has reference to a document—

The Court: That is one of the objections that I am sustaining. It has reference to a book that you are asking about now on cross-examination, which is not in evidence, your book.

Mr. Abt: But the man here has come and said that he is an expert on the subject, your Honor, and—

Mr. Parsons: Your Honor, Counsel has full freedom to bring in his own experts if he wishes, and put in these books.

The Court: That is right.

Mr. Abt: I am going to bring my own experts, your

Honor, but I think I have a right to cross-examine this expert.

The Court: No, the ruling may stand.

By Mr. Abt:

Q. Now, Mr. Witness, you identified on direct examination a booklet entitled, "On The Struggle Against Revisionism," did you not?

A. That is correct, yes.

Mr. Abt: What Exhibit Number is that?

Mr. Parsons: Exhibit 48, Counsel.

639 By Mr. Abt:

Q. That is Government Exhibit 48, and you testified that your opinions were based in part on that book, is that right?

A. Partly, yes.

Mr. Abt: May I have just a moment, your Honor? I will withdraw the question.

By Mr. Abt:

Q. Now, Mr. Witness, have you ever given false testimony under oath?

A. Once, while in the Communist Party, yes.

Q. And the false testimony that you gave under oath was in connection with a suit for an annulment of your marriage, is that not right?

A. That is correct.

Mr. Abt: That is all.

The Court: Any redirect?

Mr. Parsons: Yes, your Honor, we have several questions on redirect.

The Court: The Jury will remember your instructions. Mr. Marshal, adjourn Court until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10:00 a.m., January 18, 1954.)

640 Before Hon. Philip L. Sullivan, Judge, and a Jury.

Tuesday, January 18, 1955,
10:00 o'clock A.M.

Court met pursuant to adjournment.

Appearances:

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, by James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Esq., Special Assistant to the Attorney General, on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

641 Thereupon the following further proceedings were had herein;

Mr. Abt: Judge, just one brief preliminary matter while the jury is coming in.

I just wonder if Mr. Parsons is in a position now to give us some reasonably accurate indication as to when he is going to complete his case.

I say that, your Honor, because we have our own problems of procedure, your Honor, in arranging a time for the witnesses to appear here.

Mr. Parsons: I feel sure, your Honor, that the Government's case may be completed before the end of this week, within the end of this week.

The Court: What?

Mr. Parsons: I feel the Government's case will be completed by the end of this week. Of course the speed with which we could complete it depends to some extent on the length of cross-examination.

Mr. Abt: Yes.

The Court: All right.

Mr. Abt: Let me ask this: Shall we plan to start with our case on Monday of the following week?

Mr. Parsons: I would not want to suggest that counsel

hold the Government to that strict program or hold the Court to that strict program.

642 Mr. Abt: I understand that.

Mr. Parsons: If there is no lengthy cross-examination.

The Court: I think he realizes that.

Proceed with the case.

Mr. Parsons: Will you take the stand?

643 JOHN LAUTNER, a witness on behalf of the government, having been previously duly sworn, resumed the stand and testified further as follows:

Redirect Examination by Mr. Parsons.

Q. You are the same John Lautner who testified in this court yesterday?

A. Yes.

Q. Mr. Lautner, relative to the literature on Marxism-Leninism, were you taught not to apply certain passages of that literature to certain situations?

Mr. Abt: I object, your Honor.

The Court: I didn't hear that question.

By Mr. Parsons:

Q. Were you taught not to apply certain passages of that literature to certain situations?

Mr. Abt: I object, your Honor.

Mr. Parsons: Would Counsel wish to state the nature of his objection? I don't quite understand it.

Mr. Abt: I asked the witness on cross-examination, your Honor, if he was not taught that all passages or

644 any passages do not apply to any and all situations, and he answered that he was so taught.

Mr. Parsons: I will acknowledge the difference of our wording of the same principle, and I would use Counsel's wording. That would be quite all right with me.

I want to, on redirect, leave out questions Counsel himself has asked.

On what page do you have that? Oh, page 606, I believe. I will use your question, Counsel.

The Court: You may proceed.

By Mr. Parsons:

Q. Were you also taught not to apply certain passages to any and all situations?

Mr. Abt: I object, your Honor, to the question I asked on cross-examination.

The Court: Objection overruled.

By the Witness:

A. The answer is yes.

By Mr. Parsons:

Q. In relation to what, Mr. Lautner, in Marxism-Leninism, if anything, were you given this type of in-
645 struction?

The Court: Well, it should be by whom.

By Mr. Parsons:

Q. (Continuing.) And by whom?

Mr. Abt: Just a moment, your Honor. Can we take them one at a time?

The Court: What was that?

Mr. Abt: Mr. Parsons is now asking a compound question, and I think he should take it one at a time.

The Court: You mean by whom?

Mr. Abt: Yes.

By Mr. Parsons:

Q. By whom, sir, were you taught that?

A. By George Siskin, an instructor on Marxism-Leninism in the National Training School.

Q. Now, in relation to—

Mr. Abt: May we get the time of this, please?

The Court: The time.

By the Witness:

A. I was a student in the National Training School in 1941.

646 The Court: Is that when it was?

The Witness: Yes, your Honor.

The Court: All right.

By Mr. Parsons:

Q. Now, in relation to what in Marxism-Leninism, if anything, were you given this instruction, sir?

A. In relation to the subject matter of strategy and tactics, of Communist strategy and tactics.

Q. What, Mr. Lautner, is strategy?

A. Communist strategy is the direction of the main blow, of the main blow on the basis of the teachings of Marx, Engels, Lenin and Stalin. It covers a whole period in this particular time, the period of imperialism, what is known as that, it begins approximately at the turn of the century.

Now, this main direction is to muster those forces in society that will bring about a fundamental change in society in relation to the economic structure and the upper structures in society.

Now, this change cames about when two conditions are given.

Mr. Abt: If your Honor please—

The Court: I think he is going a little far afield,
647 a little far from your question, isn't he?

Mr. Abt: If it please the Court, may I have the Reporter read the last phrase given by the witness?

(Read by the Reporter.)

By Mr. Parsons:

Q. How, sir, does that change come about?

Mr. Abt: Did you hear the question?

The Court: Yes, I did. How did it come about?

Mr. Abt: I submit that is improper cross-examination or redirect examination, your Honor. There is no cross. First, on direct examination the witness testified as to his opinion on the aims and objectives of the Communist Party and the aims of Marxism-Leninism, and he stated that opinion was based on passages from certain books. On cross-examination he testified he was taught not to apply the passages of the books to any and all situations.

Mr. Parsons, I gathered, started redirect on that
648 matter. Now, Mr. Parsons is beginning to retrace the whole ground of this witness' testimony or opinion on Marxism-Leninism, which I didn't go into on cross-examination at all.

649 Mr. Parsons: I don't want to go beyond the scope of cross-examination, but I do want to pursue it to its logical conclusion in the explanation the witness would have to give to that matter, any explanation he could give to that matter to which he did testify on cross-examination. I want him to explain exactly what he means by strategy, and he was in the course of doing that when he came to

the point where he was explaining those changes that occurred even in strategy.

I think it is part of his explanation.

I intend also to ask him what are the tactics, what are tactics, and have him go further and explain exactly what he means by that.

The reason I am pursuing this on redirect is because the principal course of examination seemed to be, that is, of cross-examination, seemed to be directed toward utilizing the very narrow and somewhat difficult to understand difference between strategy and tactics in attempting
650 to show the inconsistent position on the part of the witness, and I would like to have it explained now.

Mr. Abt: First, your Honor, I didn't cross-examine on the question of strategy or on the question of tactics. Neither of those words was mentioned in my questions.

Second, I think we are wandering very, very far afield here from the scope of cross-examination and, in effect, have reopened his direct.

Mr. Parsons: Your Honor, whenever counsel asks a question it is so that necessarily it would have to be answered, yes, that is true, but that is the difference between what the witness is about to say, and then the witness was cut off.

The Court: We can't go all over this matter again.

Mr. Parsons: I realize that, but I do not believe, however, we have had a full explanation of this matter.

Mr. Abt: The witness has already taken five minutes to explain it.

651 Mr. Parsons: I think I have taken about three of them myself in explaining our position.

I will go on myself. I don't want to press it too far.

By Mr. Parsons:

Q. Mr. Witness, what do you mean by tactics?

A. Tactics are methods of struggle, and they are subordinate to strategy, whereas strategy is where the tactics very—

Mr. Abt: I didn't understand the witness.

Mr. Parsons: The pronunciation.

The Court: I didn't understand it either. What was that word?

(Record read by the reporter.)

652 By the Witness:

A. (Continuing) For example, the Communist Party had a so-called united front from below up to about 1934 and 1935.

In 1935 the tactics changed to united front from below and above, the portion of the united tactics in 1939 up to and about 1941, June, the period of tactics known as "struggle against imperialist war."

In June, 1945, the tactics changed to all-out united front against fascists destructions.

After the post war period—

Mr. Abt: If the Court please, I think the witness is again wandering.

Mr. Parsons: I think he is giving a very intelligent and complete answer, your Honor, to the examination.

The Court: I know, but I think we had it on direct examination.

Mr. Abt: He is about through now, your Honor.

The Court: If it is something explanatory of what was in the cross-examination, then that is different.

653 Mr. Parsons: This particular phase of it, your Honor, was on cross-examination, because counsel asked him expressly about this war against Fascism.

Now, there is an attempt here to make it appear he was confused in his testimony.

The Court: He may finish his answer.

Mr. Abt: Counsel is restating completely what I did on cross-examination, your Honor.

By the Witness:

A. (Continuing) In the post war period the tactics changed again, in the struggle against imperialism, Fascism, and imperialist war, and tactics will always change, and they are subordinate to the main strategy that does not change in an epoch, in the period in which we live today.

By Mr. Parsons:

Q. Is there a portion of the volume, "Foundations of Leninism" which deals directly with that?

A. Yes, there is.

Q. Calling your attention to that portion of that volume, page 90, and continuing through the end of the major section on page 93, I will ask you: Is that the

654 portion to which you refer?

The Court: Yes or no.

By the Witness:

A. Yes.

By Mr. Parsons:

Q. It is?

A. Yes.

Mr. Parsons: I believe, your Honor, this portion is already in evidence, the entire book. I shall ask no further questions concerning it.

The Court: All right.

Mr. Parsons: No further questions.

Mr. Abt: I have nothing further, your Honor.

(Witness excused.)

The Court: Call the next.

655 Mr. O'Donnell: With this witness, your Honor, I would like to say that with this witness the exhibit "Communist Manifesto" was yesterday referred to as Exhibit 8. Actually it is Exhibit 18.

The Court: Will you check that?

Mr. Abt: I will accept counsel's statement.

I arose because, although I have not had an opportunity to read the transcript, I notice a lot of typographical errors in it.

Mr. Parsons: I believe that was my own.

Mr. Abt: I wonder if it is necessary to make any changes how we should arrange to make them?

The Court: If you find out there should be a correction, call it to the Court's attention and the Court will see about it.

Mr. O'Donnell: That was day before yesterday.

The Court: Call your next witness.

656 MICHAEL JOHN ONDREJKA, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: You may be seated. What is your name?

The Witness: Michael John Ondrejka.

The Court: How do you spell the last name?

The Witness: O-n-d-r-e-j-k-a.

The Court: Where do you live?

The Witness: 1539 South Third Street, Milwaukee, Wisconsin.

The Court: What is your business or profession?

The Witness: I am a graduate of the Marquette University, and I am employed at the Allen-Bradley in Mikwaukee, Wisconsin.

The Court: Did you get a degree at the university?

The Witness: I am a graduate of the Marquette University in Milwaukee, the Class of '42, with an LL.B. in law.

The Court: In Wisconsin does that admit you automatically?

657 The Witness: Yes.

The Court: You take no bar examination?

The Witness: No, sir.

The Court: You may proceed.

658 *Direct Examination by Mr. O'Donnell.*

Q. Where were you born, Mr. Ondrejka?

A. I was born in Maysville, Wisconsin, a community about 50 miles from Milwaukee.

Q. When was that?

A. 1924.

Q. Did you thereafter move to Milwaukee?

A. I moved to Milwaukee after I had gotten out of Service, in order to attend school.

Q. Have you been in the Armed Forces of the United States?

A. I was in the United States Army from 1943 to the end of 1945.

Q. Are you presently married?

A. I am presently separated, sir.

Q. Do you have any children?

A. I have two children, two daughters. The older one will be three next month, and the younger is a year and a half.

Q. You mentioned being married. Are you paying or making any contribution to the support of your children?

A. Yes, I am paying temporary support and alimony.

Q. Are you a member of the union?

659 A. At the present time I am a member of the C.I.O. organizing committee at the plant where I work. Formerly I had been a member of the A.F.L., and also the United Electrical.

Q. What is that?
The Court: What is that company where you work?
The Witness: Allen-Bradley of Wisconsin.
The Court: All right. Go ahead.

By Mr. O'Donnell:

Q. In what capacity are you employed?
A. I am a machine operator working on the third shift, from eleven to seven.
Q. You mentioned you had been a member of the A. F. of L., and was that the Metal Workers?
A. I was a member of the A. F. of L. Metal Workers when I worked in my home town, from 1942 to 1943, when I went into the United States Navy.
Q. Thereafter were you a member of any other union?
A. From January 1, 1947 until the time I was laid off in the Allen-Bradley Corporation, I belonged to the United Metal Workers, who were then in the C.I.O.
From 1951 to 1953 I was a member of the United Electrical Workers, Independent.
660 Q. Have you ever held any position?
A. In the United Workers Electrical Union, Independent, I was a steward.
Q. And have you ever been a member of the Communist Party of the United States?
A. I have, sir.
Q. When did you become a member of the Communist Party of the United States?
A. I became a member of the Communist Party of the United States in November, 1949.
Q. Can you identify the defendant in this case, Claude Lightfoot?
A. Yes, sir.
Q. Would you point him out?
661 A. He is the third man at the other table (indicating).
Mr. Abt: It is stipulated that he has identified the defendant, your Honor.

By Mr. O'Donnell:

Q. Now you stated you joined the Communist Party in 1948.
What were the circumstances under which you joined the Communist Party?

A. I stated I had joined the Communist Party in November of 1949, sir.

Q. Excuse me, and what were the circumstances?

A. I went into the Communist Party at the request of the Federal Bureau of Investigation.

In 1948 I was attending the Marquette University during the summer course session, and during that time one of my professors in Labor Relations was an ex-FBI man.

Mr. Abt: If your Honor please, I don't think we need all that.

The Court: I beg your pardon.

Mr. Abt: I don't think we need all that, your Honor.

The Court: I don't see why the details are necessary.

662 Mr. O'Donnell: No, I don't think so either, your Honor.

By Mr. O'Donnell:

Q. The fact is as a result of contact with the Federal Bureau of Investigation—

A. I joined the Communist Party at their request.

Q. During the period of your membership in the Communist Party, did you report to the Federal Bureau of Investigation?

A. I reported from time to time, especially after anything had happened, I would write out a report and I would mail it to the Federal Bureau of Investigation the following day, or they would contact me if I would call them.

Q. In connection with your services, did you receive any compensation?

A. Yes, I did, sir.

I was reimbursed for any expenses that had occurred, and in addition for possibly the first two years I had worked for the FBI I think I received $25 a month, and thereafter I had received $50 a month as a salary.

Q. Without going into your contacts with the Federal Bureau of Investigation, would you describe the
663 method that you used in becoming a member of the Communist Party?

A. Yes, sir.

Mr. Abt: Your Honor—

The Court: Read that.

(Last question and answer read by the reporter.)

The Court: If it is brief, it may be answered.

The Witness: What I had done is when I had decided to get into the Communist Party, the first thing I had done is went to the Communist Book Store which was located approximately four blocks from the university, which I attended; after having purchased literature there for several weeks and having stopped in on the average of possibly two or three times a week, at which time I had talked to the people that did the selling in the Book Store, I was invited to attend a Young Progressives of America meeting by one of the people who worked in the Book Store.

I attended their meeting, and at that time I joined the Young Progressives of America, and after having been in the Young Progressives of America from approximately April of 1949 until the fall of 1949, one of the Commu-
664 nist members of the Y.P.A., which is the Young Progressives of America, started to talk to me on a much higher political level than what—

Mr. Abt: If your Honor please, I think we may dispense with the characterization.

The Court: Yes, sustained.

By Mr. O'Donnell:

Q. After you joined the Communist Party, were you assigned to a Communist Party club?

A. Yes, I was, sir.

In November of 1949, which was the first Communist Party meeting I had attended, which was in the East Division of the Milwaukee Branch, the district organizer signed my name and the amount of money I had paid at that time for membership into the Party—

Mr. Abt: The question is a very simple one, if he was assigned to a club.

The Witness: I was, sir. I was assigned to the East Side Branch of the Communist Party in Milwaukee.

By Mr. O'Donnell:

Q. How long did you remain in that club?

A. Approximately one month, sir.

665 Q. Thereafter did you become a member of another club?

A. Yes, sir.

After approximately one month, I was transferred to the Youth Group of the Communist Party of Milwaukee.

Q. How long did you remain in the Youth Group?

A. I remained in the Youth Group of the Communist

Party in Milwaukee for approximately two years, at which time the Youth Group of the Communist Party in Milwaukee was dissolved.

Thereafter, I was assigned to a cell at the Ellen Bradley Company, and that was my last Communist group I belonged to.

666 Q. Have you held any positions in the Communist Party?

A. Yes, sir.

I was the Educational Director of the Youth Group of the Communist Party of Milwaukee.

Q. As an educational director, what were your duties?

A. My duties were to prepare the educational that would take place at the meeting and also to get the literature that would be distributed at that meeting, which we sold after the educational.

Q. Directing your attention to the defendant in this case, Claude Lightfoot, in connection with your activities in the Communist Party, did you ever meet him?

A. I met Claude Lightfoot on two occasions in the year 1951.

The first occasion I met the defendant was during Negro History Week, which would be the latter part of February, in the year 1951.

The second occasion was later, possibly in the middle of June of 1951.

Q. Directing your attention to the first meeting, where was the first meeting held?

667 A. The first meeting was held at a hall known as the Milwaukee Hall, a hall on the second floor of the building, which is on State Street in Milwaukee, Wisconsin.

Q. Were there others present besides the defendant?

A. There were, sir.

There were possibly 40 or 50 people present at that meeting.

Q. Was there a chairman at the meeting?

A. There was, sir.

Q. Without stating his name, do you recall who he was?

A. Yes, I do. He was one of the State officers of the Communist Party of the State of Wisconsin.

Q. Were there any speakers at this meeting?

A. There were, sir.

Q. Do you recall at this time the name of any of the speakers?

A. I recall the name of Claude Lightfoot as the main speaker.

Q. You stated he was the speaker. What did he say at this meeting, this particular meeting?

A. At this meeting, being Negro History Week, he
668 traced the movements of the Negro peoples from the time of the American Revolution through the Civil War to the present day.

What I specifically remember, that which he had spoken about was this:

He had mentioned the fact that during the Civil War, he had outlined some of the things that the Negro peoples had done during that period of time and he had said that there was a great void—

The Court: Great what?

The Witness: Great void or a lull from the time of the Civil War; until the Communist Party had taken up the fight for the Negro peoples, nothing had been done for the Negro peoples in the United States, and without the Communist Party there could be no gains for the Negro people.

The second part of that same meeting was—at that time was the beginning of much of this Congressional investigation into the Communist Party—

Mr. Abt: If your Honor please, I object.

The Court: Sustained. Confine yourself to what was said.

669 The Witness: Secondly, what I specifically remember—

Mr. Abt: If your Honor please, I think there is no pending question.

Mr. O'Donnell: Excuse me.

By Mr. O'Donnell:

Q. Did he have any other statements to make at this particular meeting?

A. He did, sir.

Q. What were the statements that he made?

A. He had traced back about the Congressional investigations, and the fact he had been called before a legislative committee of the Illinois Legislature as to his activities.

At that time he had mentioned the fact that they could do him nothing nor could the Congressional investigations of the United States stop our Party from advancing forward.

Q. Do you recall if he said anything else at this meeting?

A. That would be the sum and substance of what he had said at the first time that I had met him.

Q. Now directing your attention to the second meeting which you attended, which I believe you stated was
670 approximately the middle of June, 1951.

Where was that meeting held?

A. That meeting was held in Chicago, Illinois, sir.

Q. Do you recall where in Chicago?

A. It was the Greek American Club on, I think it is Halsted Street or Avenue, here in Chicago.

Q. Would you briefly describe the circumstances under which you arranged to come to this meeting?

A. At that time one of the people, one of the most trusted and respected people of the Wisconsin Party in Wisconsin—

Mr. Abt: If your Honor please—

The Court: Yes, strike that.

The Witness: At that time I was told during that week that there was going to be a very, very secret meeting of the Commun Party in Northern Wisconsin.

Mr. Abt: If your Honor please, may we have all of that stricken?

The Court: Right.

671 By Mr. O'Donnell:

Q. When you—I will ask you this question, when you left your home to come to this meeting, did you know where the meeting was to be held?

A. I did not, sir.

Q. Had you been instructed to attend the meeting?

A. I was instructed to attend a Party meeting which was told to me to be held somewhere in Northern Wisconsin.

Mr. Abt: If your Honor please, I move to strike that, it is all hearsay.

The Court: Strike out what he was told.

By Mr. O'Donnell:

Q. Now without stating what you were told about this meeting, you did come to Chicago, is that correct?

A. Yes, sir.

Q. And you had been, as I understand your testimony,

if I understand it correctly, you had already been told that the meeting was to be held in Wisconsin?

A. Yes, sir.

Q. Did you receive a change in instructions as to where that meeting was to be held?

A. Yes, sir.

Q. As a result of that change in instructions, what 672 did you do?

A. I was already in the car on my way to Chicago and I kept on going to Chicago to attend this meeting.

Q. Do you recall what night of the week this meeting took place?

A. This meeting took place on a Saturday night.

I was—we were supposed to have been in Chicago at approximately six o'clock, but because of the fact we had a flat tire coming down to Chicago, we had arrived a little later, possibly a quarter to seven.

Q. Now you stated previously that the Defendant was present.

Were there other persons present in addition to the defendant?

A. There were, yes.

Q. Do you recall approximately how many?

A. I recall that there were approximately 50 people from the State of Wisconsin, in addition to Mr. Lightfoot and Mr. Gil Green of the State of Illinois.

Q. Was there a chairman at this meeting?

A. There was, sir, the state chairman of the Communist Party of Wisconsin was the chairman of this meeting, 673 being Jack Kling.

Q. Were there speakers at this meeting?

A. There were, sir.

Q. Do you recall at this time who these speakers were?

A. In addition to the chairman, who was Mr. Kling, the other two speakers at this meeting were Mr. Gil Green and Claude Lightfoot.

Q. In your presence, was the purpose for which his meeting was called stated?

A. Yes, it was.

Q. And what was the purpose as stated?

A. The purpose of this meeting was because of the fact that Mr. Gil Green was then—

Mr. Abt: Just a moment, may we have if your Honor please, who spoke there?

The Court: That is right.
Mr. Abt: And exactly what was said.

By Mr. O'Donnell:

Q. I will ask the question:
Who spoke and what did he say?

A. Mr. Jack Kling, the chairman of the State Party of Wisconsin, in his opening statement, had said, be-
674 cause of the fact that Gil Green was on bail and could not come to Wisconsin, the functionaries of the Communist Party of Wisconsin had come to Chicago to see Gil Green.

Q. Who was Gil Green at that time?

A. Gil Green was one of the National Officers of the Communist Party who was then convicted and was on bail, pending his going to jail.

Q. Did he have any relationship to the Communist Party of Illinois at that time, if you know?

A. I do not know, sir.

Q. I don't know whether you completed your answer with regard to what was said about Gil Green and the purpose of the meeting.

A. As I had said, the Chairman of the State Party of Wisconsin had said that because of the fact—

Mr. Abt: Your Honor, the witness has just said that.

The Court: I think he has stated that.

The Witness: In addition to those opening remarks, what I should have included was the fact we were there to hear Gil Green and the other speakers speak before—
675 Mr. Abt: If your Honor please, I move to strike.
The Court: Yes, strike it out.

By Mr. O'Donnell:

Q. Were there any other further introductory remarks made about the purpose of the meeting, about the nature of the meeting, excuse me.

A. Other than the fact that we were there to hear Gil Green speak before he left for prison, no, sir.

Q. Were there speeches in addition to Jack Kling's, you just mentioned?

A. There were, sir. There were Gil Green and Claude Lightfoot.

Q. And what did Gil Green say at that meeting?

A. At that time Gil Green spoke about the fact that in

the early part of the following week he would be going to jail.

He had mentioned the fact that his going to jail was nothing. In fact, he looked forward to it, but he had stressed the fact it would now become the time for the people of the Communist Party that were present there, especially those that held a white collar position, to take off their white collars and go into the ranks of labor.

676 Q. Did he give the reason as to why they should go into the ranks of labor?

A. At that time he had said that we must unite ourselves with labor in such a way that we become a part of the labor movement and be indistinguishable from it.

Q. Did he make any further remarks?

A. Basically that is what I can remember from Gil Green's speech.

Q. Now you also mentioned that this Defendant Lightfoot spoke. What did he say, if you recall?

A. Mr. Lightfoot's speech, although a little shorter than Mr. Green's, was a reiteration of the fact that the Communists must go into the working class movement.

He also mentioned the fact about taking off the white collar and going into the movement.

By doing that, we would be following the Marxian line and furthermore we would be doing an honor to Gil Green, now that he was going to prison.

Q. One further question: Was Claude Lightfoot introduced at that meeting?

A. He was, sir.

Q. Do you recall in what manner he was introduced?

A. He was introduced as one of the state officers
677 of the Communist Party of the State of Illinois.

Q. And the Chicago, Illinois, you are referring to is within the Northern District of Illinois?

A. I wouldn't know, sir.

Mr. O'Donnell: Your Honor, I would like the Court to take judicial notice that Chicago is in the Northern District of Illinois.

Mr. Abt: I will be delighted to so stipulate, your Honor.

Mr. O'Donnell: And this was subsequent to May 14, 1951.

No further questions.

678 Mr. Abt: I wonder if we might have a few minutes before the cross-examination?

The Court: The Jury may recess for a few moments.
(Whereupon a short recess was taken.)
The Court: You may proceed.

Cross-Examination by Mr. Crockett.

Q. Mr. Witness, you testified concerning a meeting that you attended at the Greek Hall here in Chicago, in June, 1951, is that right?

A. Yes, sir.

Q. Will you tell us a little more about that hall?

A. That hall, sir? The meeting was held on the second floor of that hall.

Q. What was on the first floor?

A. I do not know, sir. There were steps leading up from the left side of the hall. In addition to the hall that we were in, there was a small tiny room off the side, and in the front of the building was another hall. In the side room, when we arrived there, there had been people other than our own in this other hall that were drinking 679 coffee from these real tiny cups.

Q. So that the building was open to the public and people could come in?

A. To the part that we were in, sir, I do not think so; because we were—

Q. You mean—

A. Excuse me, sir.

Q. You mean the tiny room you were in was closed off?

A. The hall we were in, yes, sir.

Q. That hall had been rented, I take it, by the Communist Party?

A. I do not know, sir.

Q. But there were other rooms where other people were gathered in the building?

A. Other rooms?

Q. Yes.

A. Yes, sir.

Q. Now you testified that Mr. Gil Green spoke at this meeting. Was that after the Supreme Court's decision in Mr. Gil Green's case?

A. Yes, sir. This was approximately—well, from the nature of his speech, I think he had said that he was going to prison that Tuesday.

680 Q. Did he discuss the Supreme Court's decision?

A. As I recall it, sir, what he had discussed was the fact that he looked forward to going to prison, that I am sure he had said.

Q. He didn't tell you anything about the decision itself, though?

A. The decision itself? I cannot remember, sir.

Q. Did he tell you that two Supreme Court justices, Mr. Justice Black and Mr. Justice Douglas, agreed with him that the Smith Act was unconstitutional?

A. As I recall it, sir, he may have said that there had been a dissent by two of the Supreme Court justices. Now I heard that at some meeting, and possibly it was at that meeting, sir.

Q. Did he tell you that Mr. Justice Black said that the Smith Act constituted an unwarranted invasion of freedom of speech of the American people?

Mr. Parsons: I object, your Honor.

The Court: Sustained.

By Mr. Crockett:

Q. Now, concerning this other meeting that you attended, you said that Mr. Lightfoot was present, and that was in February of 1951, Negro History Week?

A. Yes, sir.

681 Q. And Mr. Lightfoot spoke generally about Negro History Week, is that right?

A. He spoke on two topics. The one was the first part, as I had testified to, as to Negro History Week, and the second part of that speech was devoted to the legislative inquiries into the Communist Party which there had been in the State of Illinois and also as to the general Congressional investigation, sir.

Q. Now do you know from your own membership in the Communist Party, Mr. Witness, whether or not it is customary for the Communist Party each year to observe Negro History Week?

A. Yes, sir.

Q. It is customary?

A. Yes, sir.

682 Q. Do you know from your membership in the Communist Party and your attendance at Negro History Week celebrations that Negro History Week was originated at Howard University at Washington, D. C.?

Mr. Parsons: I object. I think it is immaterial and it hasn't been gone into on direct examination.

The Court: Sustained.

By Mr. Crockett:

Q. Did Mr. Lightfoot speak about the origin of Negro History Week in his speech?

A. I do not think he did, sir.

Q. Now Mr. Lightfoot also discussed the Broyles Bill, is that right, at this meeting?

A. Would you repeat that, sir?

Q. At this meeting in February 1951, Mr. Lightfoot also discussed the Broyles Bill, did he not?

A. I do not recall him having spoken about that bill, sir.

Q. He spoke about his appearance before the Illinois Legislature?

A. Yes, a committee of the Illinois Legislature.

Q. A committee of this Legislature?

A. As I remember, sir.

683 Q. Did he tell you why he appeared before the Illinois Legislative Committee?

A. As I recall, what Mr. Lightfoot had said is that when he had appeared before the committee, they had been questioning him as to his Communist affiliations.

Q. He didn't say what he discussed before the committee?

A. What he had discussed before the committee?

Q. Yes.

A. No, sir. I was under the impression that it was a matter of them questioning him and him answering.

Q. Did he state that he himself requested an opportunity to appear before this committee as a representative of the Communist Party?

A. I do not recall that, sir.

Q. I believe in your direct examination, Mr. Witness, you testified that you were at one time a member of the United Electrical Workers Independent Union?

A. Yes, sir, I was.

Q. And you were shop steward?

A. I was, sir.

Q. Were you on the Bargaining Committee for

684 the Union?

A. I was not, sir.

Q. Is it or is it not a fact that you were expelled from that union?

You can answer that yes or no.

A. I could not answer that yes or no, sir, because of the fact that they never went through procedures for the purpose of being expelled; what they had said to me was the fact that they would refuse to accept my dues.

Q. Didn't that grow out of your opposition to the new contract that had been negotiated between the union and the Allen Bradley Company?

A. In part, yes, and also it came out of the fact that I had signed a petition for a C. I. O. organizing drive in the plant.

Q. That contract was approved about 2,000 to 4, with you among the four, isn't that right?

685 By the Witness:

A. Approximately so, yes, sir.

Mr. Crockett: That is all.

The Court: You may step down.

The Court: Call your next.

Mr. O'Donnell: I would like to ask a question on redirect, your Honor.

The Court: Very well.

Redirect Examination by Mr. O'Donnell.

Q. Mr. Ondrejka, you were asked about the Justices of the Supreme Court, and reference was made to two of them.

As an attorney at law, do you know how many Supreme Court Justices there are in the United States?

A. I do, sir.

Q. How many are there?

A. Nine.

Q. Now, you were asked questions about statements made by Mr. Lightfoot in connection with the Broyles Bill. Do you recall any different statements made by him?

A. As to the Broyles Bill itself, I do not, sir. The 686 only statement—

The Court: That is all.

By Mr. O'Donnell:

Q. Do you know what the Broyles Bill is?

A. I do not, sir.

Mr. O'Donnell: No further questions.

(Witness excused.)

ANTON J. CZARNOWSKI, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination.

The Court: What is your name?
The Witness: Anton J. Czarnowski.
The Court: Will you spell the last name?
The Witness: C-z-a-r-n-o-w-s-k-i.
The Court: Where do you live?
The Witness: 7513 West 63rd, Argo, Illinois.
Mr. Abt: I am sorry, I didn't hear that.
The Court: 7513 West 63rd Street, Argo, Illinois. What do you do?
687 The Witness: I am a sign painter.
The Court: For whom?
The Witness: I work on my own, yes.
The Court: Work on your own?
The Witness: Yes, sir.
The Court: Proceed.

By Mr. O'Donnell:

Q. Have you ever testified in a court before?
A. No, sir.
Q. Just sit back and don't be nervous, if you can. Where were you born?
A. I was born in Poland, Lebno, a village near Danzig, Poland.
Q. When were you born?
A. August 12, 1896.
Q. Did you subsequently come to the United States?
A. Yes, I came to the United States.
Q. And when?
A. In 1913, August 13.
Q. You are presently living in Chicago?
A. No, in Argo, Illinois. That is a suburb of Chicago.

688 By Mr. O'Donnell:

Q. That is a suburb of Chicago?
A. Yes, sir.
Q. How long have you lived in and around Chicago?
A. Around thirty years.
Q. Are you a citizen of the United States?

A. Yes, sir.

Q. Under what circumstances did you become a citizen of the United States?

A. I received my citizenship by Act of Congress in 1917, 1918.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. Four children.

Q. Just in general how old are your children?

A. 30, 28, 26 and 18.

Q. Are they sons or daughters?

A. Yes, two boys and two girls.

Q. What formal education have you had?

A. High school and the School of Finance and Commerce at the University of Detroit, and the Art Institute.

Q. Where did you attend high school?

689 A. In Europe, sir.

Q. You say in Europe. Where in Europe?

A. In Germany. At that time it was a part of Poland—I mean Poland was a part of Germany.

Q. Where did you attend this high school?

A. There.

Q. Then where did you attend this School of Commerce?

A. At Detroit.

Q. Is that the University of Detroit?

A. Yes, sir.

Q. You attended the Art Institute also?

A. Yes, here in Chicago.

Q. Was that in connection with the work you were doing, your trade?

A. Yes, sir.

Q. Have you served in the Armed Forces of the United States?

A. Yes, sir, from 1917 to 1919.

Q. Did you volunteer or were you drafted?

A. I volunteered. I deserted the German draft, and I volunteered in the United States.

The Court: Will you read that, please? I didn't hear it.

Mr. Abt: I didn't hear it either.

690 (Answer read by the reporter.)

By Mr. O'Donnell:

Q. What branch of the United States Army?

A. Regular.

Q. That is in the United States Army?

A. Yes.

Q. Did you serve overseas?

A. Yes, one year overseas.

Q. What was the highest rank you received?

A. Sergeant.

Q. I assume in 1917 you served in Europe, is that right?

A. The latter part of 1917 to 1919.

Q. What organizations do you belong to?

A. To the American Legion. I am a member of the American Committee of the Army Post No. 75, of the American Legion.

Q. Have you ever been a member of the Communist Party of the United States?

A. Yes, sir.

Q. When did you join the Party?

A. I joined the Communist Party on the request of the F. B. I.

Q. When?

A. In 1943.

691 By Mr. O'Donnell:

Q. How long did you remain in the Communist Party?

A. I am still a member. I don't know for how long yet, but I am still a member.

Q. When was the last meeting you attended?

A. Last Sunday. I have one scheduled for tonight.

Q. Please just answer the question.

A. Yes, sir.

Q. Can you identify the defendant in this case, Claude Lightfoot?

A. He is the gentleman in the gray suit with the mustache.

Mr. Abt: It is so stipulated.

By Mr. O'Donnell:

Q. Did you know him in your membership in the Communist Party?

A. Yes, sir.

Q. Do you know what positions, if any, Mr. Lightfoot has held?

A. He was in the south side section, organizer, a member of the State Committee, Regional Director of Industrial Concentration, and a member of the National Committee.

Q. Of the Communist Party?

692 A. Yes.

Mr. Abt: I move that be stricken, unless the sources of the witness' knowledge is shown.

The Court: I beg your pardon?

Mr. Abt: I move to strike that unless the sources of the witness' knowledge is established.

The Court: I think that should be done.

Mr. O'Donnell: We will go along with that, your Honor, after this.

By Mr. O'Donnell:

Q. Will you describe the circumstances under which you became a member of the Communist Party of the United States?

A. During the war I got a job at the Electromotive of General Motors Corporation, and during the period of my employment there were activities there, Nazi activities going around, such as agitation against purchasing bonds, and other propaganda, so I reported these activities to the F. B. I., incidentally with the approval of the Communist Party, or some of them.

Mr. Abt: I am sorry, I just don't understand this witness.

693 The Court: I didn't hear it either.

The Witness: I said, incidentally, with the approval of some of the leaders of the Communist Party, when I reported against the Nazi activities in the plant. One day the members asked me, the agents of the F. B. I. asked me whether I cared to join the Communist Party, and I asked them could I think it over, and they said surely, and after a week's consideration I have consented to join.

By Mr. O'Donnell:

Q. During the course of your membership in the Communist Party, did you give reports to the F. B. I.?

A. After every meeting.

694 Q. During the course of your membership in the Communist Party did you receive any compensation from the F. B. I.?

A. First I received expenses. They asked me about it, and I said I wouldn't accept any money, so they gave me money for expenses.

When the years passed by I received from five to forty dollars a week.

Q. Did you report the moneys you received from the F. B. I. in connection with your services on your income tax returns?

A. Yes, sir.

Q. Now, when you—I will withdraw that.

I believe you stated that in 1943 you first became a member of the Communist Party. You describe briefly, if you will, the method you used in obtaining membership in the Communist Party at that time?

A. I really didn't know a Communist in that plant, but a good union man in that particular plant tipped me off how I could get in contact with a Communist member.

Mr. Abt: If the Court please, I object.

The Court: Yes, sustained.

By Mr. O'Donnell:

695 Q. Without stating any conversation, what steps did you take in obtaining membership?

A. I then got a job to work in the vicinity where this Communist was working, and we started conversation. I praised the Soviet Union, and he asked me whether I knew anything about the Communists, and I said I didn't know, and would I care to attend some of the meetings, and I asked him what kind of meetings.

Mr. Abt: If the Court please, I object to all these conversations.

The Court: Yes. No conversation.

By Mr. O'Donnell:

Q. Just what happened as a result of that?

A. He asked me to attend one of the meetings. If I like it O. K.; if I don't, just to forget about it.

Q. Did you attend a meeting?

A. Yes.

Q. Then what happened?

A. I attended several other meetings until I got transferred into the Argo Club.

Q. Where were you working at this time?

A. At the Electromotive in La Grange.

Q. What is the Electromotive?

696 A. The Electromotive is a manufacturer of locomotives, a branch of the General Motors Corporation.

697 By Mr. O'Donnell:

Q. Thereafter you became a member of the Communist Party, is that correct?

A. Yes, sir.

Q. Were you assigned to a club?

A. To the Argo club.

Q. How long did you remain a member of the Argo club?

A. I believe it was up to 1947.

Mr. Abt: May we have the date that he joined, Mr. O'Donnell?

By Mr. O'Donnell:

Q. Do you recall approximately when you were assigned to the Argo club?

A. In 1947, and part of the time I attended both clubs.

Q. No. If I understand your testimony, you came in in 1943?

A. Yes, sir.

Q. Then after you became a member you were assigned to a club, is that correct?

A. Yes, sir.

Q. What was the name of that?

A. The Argo-Summit Club.

Q. The Argo-Summit Club?

698 A. Yes.

Q. That was a part of the Communist Party?

A. Yes.

Q. That was for part of 1943?

A. Yes, sir, and 1944.

Q. How long did you remain a member of the Argo Club?

A. Up to 1947.

Q. Were you thereafter assigned to any other clubs?

A. I was assigned to the Industrial Club, a West Suburban club of the UAW.

Q. O. K. Now, where were you working during this period, the time between '47-'48?

A. At the Electromotive.

Q. Now, how long did you remain in this second club you have just referred to?

A. In the second club I remained up to 1950, I believe.

Q. And did you leave that club then?
A. I left that club after I quit the Electromotive.
Q. Why did you leave that club?
A. I quit the Electromotive so I had no—I was not a member of the Industrial Club any more, and I was assigned to the Argo Club.
699 Q. Was there any difference between the Argo Club and this Industrial Club to which you refer?
Mr. Abt: I object, your Honor.
The Court: He may answer.

By the Witness:

A. The Industrial Club took care of union matters, while the Argo Club took care of general community matters.

By Mr. O'Donnell:

Q. And can you just explain what you mean by general community matters?
A. Oh, like infiltration.
Mr. Abt: I am sorry. I didn't hear that.

By the Witness:

A. (Continuing) Infiltration into an organization, a civic organization, organizations, and distributing leaflets around the houses.
Mr. Abt: If your Honor please, I object and move to strike the characterization, "infiltrate".
The Court: Yes, strike it out.
700 Q. With reference to the word "infiltration", why did you use the word "infiltration"?
Mr. Abt: I object, your Honor.
The Court: Sustained.

By Mr. O'Donnell:

Q. Were you told what the purpose of this club was when you were in the Communist Party, that is, the Community Club that you belonged to?
A. Well, they—
Mr. Abt: That calls for a yes or no answer, Mr. O'Donnell.

By Mr. O'Donnell:

Q. Did they tell you what the purpose of the club was?
A. Yes.

Q. What did they tell you was the purpose of the club?
Mr. Abt: Object, your Honor, to any conversation.
The Court: Sustained.
Mr. O'Donnell: Your Honor, this goes to his background first in the Communist Party and secondly, it goes as to the nature of the Communist Party, specifically
701 in the Northern District of Illinois since 1945.
The Court: I know, that objection was sustained.

By Mr. O'Donnell:

Q. While a member of the Argo Club, did you receive a Communist Party membership card?
A. Yes, sir.
Q. Did you use your own name while you were in the Communist Party?
A. No, sir.
Q. What name did you use?
A. Steve Czerwin.
Q. Why did you use this name?
Mr. Abt: I object.
The Court: He may answer.

By Mr. O'Donnell:

Q. Why did you use the name you have just given me?
A. I wouldn't want to disgrace my family name, being a member of the Communist Party.
Mr. Abt: Move to strike it out.
The Court: Strike it.

By Mr. O'Donnell:

Q. I will show you what is marked Government Exhibit Number 57, which purports to be a membership card
702 in the Communist Party of the United States, and ask you if you have ever seen this before.
A. Yes, sir. This is my membership card, 41947.
Q. When did you receive that card?
A. I received this at the Club, the branch meeting of the Communist Party.
Q. I will show you what has been marked as Government Exhibit 68, which purports to be a Communist Party membership card of the Illinois—I withdraw that—1948 membership card of the Communist Party of the United States, and I ask you if you have ever seen this before.
A. Yes, sir.
This is my dues card for 1948.

Q. Where did you receive that?

A. At the Club meeting of the Communist Party.

Q. And at the time you received this, was your club part of the Communist Party of Illinois?

A. Yes, sir.

Mr. O'Donnell: Your Honor, I would like to offer these cards in evidence at this time, and we would like to read from them briefly.

Mr. Abt: We have no objection, your Honor, except
703 that if the Government is going to read anything from the back of a card entitled "Rights and Duties of Party Members," I make the request they read the entire back of the card, which is very brief.

Mr. O'Donnell: We have no objection to that, your Honor, but I think the Government should be allowed to offer what they wish to read first.

The Court: I think that is right. If you want to read later, you may.

Mr. Abt: The only difficulty is that the Jury may have forgotten then. If I may read immediately after they have read, so the Jury may get the connection, the whole thing is very brief, it won't take up but a few minutes to read it, your Honor.

Mr. O'Donnell: Your Honor, I hadn't even offered what I wished to read.

The Court: Well, you have offered the content.

It may be admitted.

Mr. O'Donnell: Thank you, your Honor.

704 Mr. Abt: May I look at the other card while you are reading that one?

Mr. O'Donnell: Government's Exhibit Number 67 is 1947 membership card, Communist Party of the United States of America, name, Steve Czerwin, that is the name you used?

The Witness: Czerwin, C-z-e-r-w-i-n, yes.

Mr. O'Donnell: (Reading) "City, Argo; State, Illinois; 11/23/46," that is the date issued, and here is what appears to be a stamp, "Gil Green," signature, over the line, signature of the State Chairman.

By Mr. O'Donnell:

Q. Do you know who Gil Green was at that time?

A. Yes. He was Chairman of the State of Illinois, Northern Part of Indiana, of the Communist Party.

Q. Now looking at the inside of this card, on the inside of the bottom it states:

705 "Read the Daily Worker and the Worker. Read our Monthly Magazine Political Affairs." On the back of the card, it reads:

"Rights and Duties of Party Members.

"To at all times loyally defend the interests of the workingclass against the forces of fascism and reaction.

"To fight against all forms of national oppression, discrimination and segregation, and all ideological influences and practices of 'racial' theories.

"To fight for the full social, political and economic equality of the Negro people, for Negro and white unity.

"To attend club meetings, read the Party press and literature, pay dues regularly and be active on behalf of the program and policies of the Party.

"To participate in working out all policies and tasks of the club, and to regularly examine the execution of such policies.

"To vote for all officers, committees and delegates, and be elected to any office or committee in accord with

706 provisions of the Constitution.

"To appeal any decision with which there is disagreement to the next higher body, carrying out the decision while appeal is pending.

"To strive to master the program and policies of the Party, the principles of Marxism-Leninism."

707 The other card contains substantially the same material, so I don't think there is any point in reading that at this time, your Honor.

Mr. Abt: I will stipulate to that, and I would ask your Honor that the jury be allowed to examine the two cards.

The Court: All right.

Mr. O'Donnell: No objection to that.

By Mr. O'Donnell:

Q. Now, did you hold any positions in the Communist Party during your membership?

A. Yes. I was literature director.

The Court: You were what?

The Witness: Literature director. And veterans' director, and dues—I took dues for the Branch.

Mr. Abt: Sorry, I didn't hear the last.

The Witness: I took dues in, dues payments, membership dues.

By Mr. O'Donnell:

Q. What were your duties as dues collector?

A. To see to it that members have paid up their membership and those that have not, get after them and collect money from them.

708 Q. In connection with your duties, did you keep a record of dues?

A. Yes, sir.

Q. I will show you what has been marked Government's Exhibit 72, which purports to be a dues book and ask you whether or not you have seen this before?

A. This is the dues book of the West Suburban Branch that I received from the Branch when I took care of the dues of that membership.

Q. And I will show you at this time what has been marked Government's Exhibit 73 and ask you if you have ever seen this before?

A. This is the dues book of 1948 of the West Suburban Club.

Q. Did you have those books in your possession in connection with your duties?

A. Yes, sir.

They were later on discarded.

Mr. Abt: Move to strike, your Honor.

The Court: Yes, strike that.

By Mr. O'Donnell.

Q. Did you keep the records of the club as far as dues were collected in these books?

A. Yes, I kept my record in there.

709 Q. That was your duty to do at the time you had these books?

A. Yes, sir.

Q. And this was a club of the Communist Party of the United States?

A. Yes, sir.

Mr. O'Donnell: I offer these two books at this time, your Honor.

Mr. Abt: I don't believe these books have any relevancy whatsoever to the issues here, your Honor, I object. Would you like to see them?

The Court: Well, I take it that they indicate dues. What is the relevancy of it?

Mr. O'Donnell: We are going to ask him a number of

questions with regard to those books and with regard to his duties in the Communist Party of Illinois bearing on the aims and objectives of the Communist Party generally, and specifically in Illinois at the time in which Mr. Lightfoot was a functionary of the Communist Party of Illinois.

710 Mr. Abt: I still don't understand the relevancy of the exhibit. This is a list of names, your Honor.

The Court: Well, of course it only would be cumulative. It may be received.

By Mr. O'Donnell:

Q. Now I will show you what has been accepted in evidence as Government's Exhibit 72, West Suburban Dues for 1947, and Government's Exhibit 73, West Suburban Dues, West Suburban, 1948, and I will ask you to examine those two exhibits, with particular reference first to the book for 1947 and tell us whether or not, without mentioning the names, you have the full names and the addresses of the persons from whom you collected dues.

Mr. Abt: I object, your Honor, immaterial.

The Court: He may answer.

The Witness: In 1947—

The Court: No, if you—

Mr. O'Donnell: Yes.

The Witness: Yes.

By Mr. O'Donnell:

Q. Now I direct your attention to Government's
711 Exhibit 73, which is the dues book, West Suburban, 1948, and ask you to examine that and tell the Court and jury whether or not you have used the full names and addresses of the parties from whom you collected dues during that year.

A. No, sir.

Q. What is the reason for the difference in the manner in which the books are kept for the two years?

Mr. Abt: Object, your Honor.

The Court: He may answer.

The Witness: In 1948, security measures were put into effect, and due to our security only the first name was given, no addresses, not the last name.

In later years—

Mr. Abt: Just a moment. Move to strike the answer, your Honor, as a conclusion of the witness.

The Court: Yes, strike it out.
Mr. O'Donnell: I think, your Honor—
The Court: I know, he starts off with "security measures."

By Mr. O'Donnell:
Q. Were you given instructions as to how these books were to be kept?
712 A. I received this book of 1948 the way it is written out.
Q. Were you given any instructions as to the manner in which you were to keep the book?
A. We were told at a meeting that—
Mr. Abt: Just a moment. Your Honor, I object to any conversations.
The Court: Yes, unless you identify it.

By Mr. O'Donnell:
Q. Was this a meeting of the Communist Party?
A. Yes, sir.
Q. And do you recall now where the meeting was held?
A. Where it was held?
Q. Where it was held, yes.
A. Well, it was held in Lyons, Illinois.
Q. It was a Communist Party meeting?
A. Yes, sir.
Q. What was the purpose of the meeting?
Mr. Abt: Object.
The Court: He may answer, if he knows.
The Witness: The purpose of the meeting is to—a regular Communist meeting to discuss matters pertaining to the Communist activities on the outside and in the plant, in the unions.
713 Q. At that meeting did you receive instructions as to the manner in which you were to keep these books?
A. I don't get your question, sir.
Q. At that meeting were you given any instructions as to the manner in which you were to keep these books, these membership books?
A. Well,—
Mr. Abt: That calls for a yes or no answer, I take it, Your Honor.
The Court: Yes or no.
The Witness: Yes.

By Mr. O'Donnell:

Q. What instructions did you receive?

Mr. Abt: Object, your Honor.

The Court: He may answer.

Mr. Abt: No connection shown with the defendant, pure hearsay as to him.

By the Witness:

A. I was told to check the—

The Court: Of course, it must be connected up with this defendant in order to have it binding on him.

Mr. Abt: I submit then, your Honor, that a proper
714 foundation has to be laid first.

Mr. O'Donnell: Your Honor, we are talking about the Communist Party of Illinois now. This witness has previously testified that he knew the positions that Lightfoot held in the Communist Party of Illinois.

Your Honor said we should further connect that up, which we are doing, starting from the bottom up.

Furthermore, we have had an admission at the beginning of this case in connection with the opening statement as to defendant's membership, we have had evidence—

The Court: Well, you are talking about the Party now, are you?

Mr. O'Donnell: Yes.

Now at this time we have evidence to the fact that Lightfoot was a member of the District Committee, and we will have further evidence concerning that.

Mr. Abt: If your Honor please, the fact that a man is an officer of an organization, incorporated or unincorporated, obviously does not make it admissible against
715 him in a criminal proceeding, any conversations that occurred between members or other officers of the organization outside of his presence, and as far as is yet shown, without his knowledge.

There has to be some connection. Otherwise we are getting nothing but hearsay against the defendant.

Mr. O'Donnell: This witness is testifying to the modus operandi of the Communist Party of Illinois as he knows it, as he witnessed it.

The Court: Objection sustained.

By Mr. O'Donnell:

Q. Well, I will ask you this question:

I notice that the names in the book for 1948, that is

Exhibit No. 73, are first names, Steve, Marion, John P. and so forth. You kept this book, did you not?

A. Yes, sir. But the names were written out already when I received the book.

Q. And that is the method in which you received the names in order to keep this book?

A. Yes, sir.

716 And I wrote out the receipts for the money I received.

Q. But before, in 1947, you had another book that you kept, isn't that right?

A. Yes, sir.

Q. That book has full names and addresses, does it not?

A. Correct.

Mr. Abt: He has been through all that, your Honor, already.

The Court: The answer may stand.

By Mr. O'Donnell:

Q. After this last book, that is Government Exhibit 73, in your club, did you have any other books?

A. No, sir.

Q. Did you keep any record of the dues?

A. At that Industrial Club, I did not.

The Court: No, the question is: Did you keep any record of the dues, that can be answered yes or no.

The Witness: I was not a dues collector after 1947—after 1948.

By Mr. O'Donnell:

Q. Do you know whether or not after 1948 a dues book was kept in your club?

717 A. No, sir.

Q. That means there wasn't one kept?

A. Not that I know of.

Q. Now you testified you were a literature director of your club.

What was the duties of the literature director?

A. To obtain literatures from the Modern Book Store.

718 Q. Excuse me. What was the Modern Book Store?

A. The Modern Book Store is a book store of the Communist Party.

Q. Where is it located?

A. Of Illinois.

It is located at 64 West Randolph Street, on the 9th floor.

Q. Is that in Chicago, Illinois?

A. In Chicago, Illinois.

Q. I believe I interrupted you when you were answering a question as to your duties.

A. The duties were to obtain literature and to see to it that they are sold to the amount of membership at the club meetings?

Q. Did you do that?

A. Yes, sir.

Q. You also referred to a position you held, I believe, as Veterans' Director.

A. Yes, sir.

Q. What were the duties in this position as Veterans' Director?

A. I was in charge to organize Veterans, that is Communist Veterans' Organization in Argo, Lyons, Willow Springs, in that vicinity.

719 However, I have never succeeded.

Q. When you are talking about Veterans, what do you mean by "Veterans"?

A. Communist Veterans, Communists who have served in United States Forces, during World War II or World War I, and World War I.

Q. Directing your attention to the defendant in this case, Claude Lightfoot, have you attended meetings at—Communist Party meetings, at which he was present?

A. Yes, sir.

Q. Do you know the positions he has held in the Communist Party of Illinois?

A. Yes, sir.

Q. Are those the positions to which you have previously testified?

A. Yes, sir.

Q. Now I want to ask you just a few questions:

Mr. Abt: If your Honor please, I suggest that is not a sufficient foundation. The man says he knows. We don't know the source of his knowledge, how he knows anything about it.

The Court: Yes, I think that is correct.

720 Mr. O'Donnell: We will develop it further, your Honor.

By Mr. O'Donnell:

Q. Now in the Communist Party of Illinois, what is the smallest organization, the smallest unit?

A. The club or branch.

Q. What comprises a club or branch?

A. Of small groups, about three members, four members, maybe six.

Q. Then are there more than one type of club?

A. Yes, there is the industrial club which takes care of the union activities and the community club.

Q. With regard to the industrial club and union activities, what do you mean by that?

A. Well, in the union branches they have their own sections, such as the U.A.W. Section, and the Harvester, and so on. And they meet and discuss the problems of the union prior to the union meeting.

Then they try to put over their program along the Marxist-Leninist line, inject them into the union.

Mr. Abt: If your Honor please—

The Court: Yes. From what they try to do may go out.

721 By Mr. O'Donnell:

Q. You were a member of such a club?

A. Yes, sir.

Q. In connection with the unions, what took place at your club?

A. The community club?

Q. No, the industrial club to which you are referring.

Mr. Abt: If your Honor please, I am afraid these questions are asked in such general a fashion we are always going to get answers which are objectionable likewise.

The Court: I think they should be more specific.

By Mr. O'Donnell:

Q. I believe you testified that you remained a member of this industrial club until 1950 or 1951, is that correct?

A. Yes, sir.

Q. And over the period of your membership in the Communist Party, approximately how many meetings did you attend of one nature or another, Communist Party meetings?

A. Oh, I attended several of them, I don't remember 722 how many.

Q. I mean—

A. (Continuing) There were some every week.

Q. During your membership, you attended meetings, several each week?

A. Every week, second week, I don't remember.

Q. Now among these meetings you attended were meetings of the industrial club, is that correct?

723 A. Industrial club mettings, Party section conventions, UAW meetings of the Communist Party and so on.

Q. Now we have been talking about industrial clubs, and I believe you have testified concerning the community clubs.

Now those were the two different types of clubs in the Communist Party.

What was the next highest level in the Communist Party, if there was any?

A. The section.

Q. What comprises the section on the Communist Party in Illinois?

A. In the section are several branches; some sections are five branches, or there is more or less.

Q. Now higher than the section in the Communist Party, is there any higher unit?

A. There is the State Board.

Q. What is the State Board?

A. The State Board is the highest executive branch of the Communist Party in the State of Illinois and the northern part of Indiana.

Q. During your membership in the Communist Party, do you know whether or not the Defendant Lightfoot

724 was a member of the State Board of the Communist Party?

A. Yes, sir.

Mr. Abt: Again, your Honor, we have no basis for the witness' opinion.

The Court: The answer may stand.

By Mr. O'Donnell:

Q. Now higher than the State Board or Committee of the Communist Party of Illinois, is there any higher organization in the Communist Party?

A. There is the National Committee of the Communist Party.

Q. Do you know of your own knowledge whether or not—strike that.

Do you know whether or not the Defendant Lightfoot is a member of the National Committee of the Communist Party?

A. Yes, sir.

Mr. Abt: I object again, your Honor.

The Court: You would have to find out how—

By Mr. O'Donnell:

Q. How do you know?

A. He was admitted to the National Committee on
725 his 20-year service.

Mr. Abt: Just a minute, your Honor.

The Court: Just a minute. How did he know?

He may answer.

Mr. Abt: He wasn't answering how he knew, and that is why I objected.

By Mr. O'Donnell:

Q. How do you know this?

A. I was present at a 20-year service anniversary of Claude Lightfoot in the Communist Party, at which time he was appointed to the National Committee of the Communist Party.

Q. Did he speak at that meeting?

A. Yes, sir.

Q. What did he say?

A. He said that he accepts the appointments, the Honor of this appointment, as an elevation to the Negro people. After he finished the speech, he attacked the National Advancement of the Colored People as reactionaries.

Mr. Abt: I object. If he said something, let's have what he said.

726 Mr. Parsons: He is telling us.

The Court: Strike it.

Mr. O'Donnell: We will go into that later.

By Mr. O'Donnell:

Q. Do you recall when that meeting took place?

A. Oh, I believe it was August 26, 1950. It was in 1950.

Q. I will show you what has been marked as Government Exhibit 61 for identification, which purports to be

a letter to be read at all club and section meetings, and ask you if you can identify this.

First I will ask you if you have ever seen this before?

A. Yes. I turned this in. I received that from Charles Winston.

The Court: Answer yes or no.

The Witness: Yes.

By Mr. O'Donnell:

Q. Now where did you receive this?

A. At the club meeting.

Mr. O'Donnell: I will offer this in evidence at this time, your Honor.

Mr. Abt: May we have a moment, your Honor,
727 This is another Exhibit that we haven't seen.

The Court: Very well.

Mr. Abt: No objection, your Honor.

The Court: It may be received.

(Whereupon said instrument was received in evidence as GOVERNMENT EXHIBIT 61.)

Mr. Abt: Do you want to read it?

Mr. O'Donnell: Yes.

Mr. Abt: Do you have a copy, so I can follow it?

Mr. Parsons: No, we haven't.

Mr. Abt: Let me ask you this: Are you only going to read part of it?

Mr. O'Donnell: Yes, just part of it. I don't think we will read the whole thing.

Mr. Abt: Show me what you are reading. We agree, if it will be exhibited to the jury afterward.

The Court: I see no purpose in reading it.

Mr. Abt: I think that would be a very good solution. Just let the jury see it.

Mr. O'Donnell: All right.

728 I would like to just ask a question from it.

The Court: All right.

By Mr. O'Donnell:

Q. This Exhibit states that on May 26, Saturday evening—the date is 30 April 1951, and it says: "On May 26th, Saturday evening, a testimonal dinner and dance is being tendered to Claude Lightfoot, State Executive Secretary, in recognition of 20 years of devoted and courageous leadership to the Chicago working class and the Negro people.

"Date: Saturday evening, May 26th.

"Time: Dinner served promptly at 6:30 p. m.

"Place: Packinghouse Workers Center, 49th and Wabash Avenue.

"Menu: A delicious full-course meal.

"Program: Comrade Fred Fine as Master of Ceremonies will bring Greetings from the National Committee. Additional brief tributes from prominent Party and non-Party working class leaders will be heard along with brilliant entertainment features."

Did you attend this meeting?

A. Yes, sir.

Q. Was the Defendant Lightfoot present at that meeting?

729 A. Yes, sir.

Q. Were there any speakers at this meeting?

A. Yes, sir, there were several speakers.

Q. Did the Defendant Lightfoot speak?

A. Yes, sir.

Q. What did he say at this meeting?

Mr. Abt: I think we have had this, his statement, have we not, your Honor?

Mr. O'Donnell: As to this meeting.

The Court: I take it "at this meeting" is what he asked.

Mr. Abt: I think we have had it.

The Witness: He said that he had joined the Communist Party because the Communist Party is fighting for the rights of the Negro people, and only the Communist Party can give them freedom and equality. He accepts this elevation to the highest office in the Communist Party, to the National Committee, as an elevation of the Negro people.

He thereupon attacked the National Advancement of Colored People—

Mr. Abt: Now, your Honor—

730 The Court: Yes.

By Mr. O'Donnell:

Q. We will come back to this later.

Now, Mr. Witness—

Mr. Abt: Will you show that to the jury, Counsel?

Mr. O'Donnell: Yes.

By Mr. O'Donnell:

Q. How often over the period of your membership in the Communist Party, how often did the clubs of which you were a member, meet?

A. Well, they met irregularly, with the exception of the Community club, that I belonged to, has been quite regular, every two weeks.

Q. Directing your attention to the period from 1948 until May 14, 1954, how were you notified as to meetings of your club?

A. From person to person.

Q. Were you ever contacted by telephone?

A. No, sir.

Q. Or by mail?

A. No, sir.

Q. Now the club meetings to which you are referring, are they open meetings?

731 A. No, sir.

Q. What kind of meetings are they?

A. Very strict, under control.

Mr. Abt: Now if your Honor please—

The Court: Strike it.

By Mr. O'Donnell:

Q. What kind of meetings are they?

Mr. Abt: I object to the form of the question. He said, "Are they open meetings," and the witness said "No."

The Court: Well, I think he may ask that question.

By Mr. O'Donnell:

Q. Will you explain—when you said "No," would you explain what you meant by that answer?

A. The meeting is closed, in secret, nobody but Party members are permitted to come.

Q. Now could you describe briefly what took place at the Communist Party meetings over this period that I have just asked you about?

A. We take up dues, the program that has been recommended by the Section, a series of literature and any community or industrial question that comes up, that was brought forth; also education, there is always a cer-

732 tain period assigned to education in these club meetings.

Q. Now with reference to party literature, to which you have testified, are there periodicals or newspapers which the Communist Party uses?

A. Yes, there is the "Worker," "Political Affairs," and then we have others, if there is an exceptional article

or booklet to be studied, we will take that up at the educational period.

Q. Now with regard to the "Worker" and "Daily Worker," in the course of your Communist Party activities, is there any particular emphasis put on those periodicals?

A. Well, each member must subscribe to the "Worker," or "Daily Worker;" it is practically a must.

Q. Are they required to get other subscriptions besides their own?

A. Besides the "Worker" and "Daily Worker," there is a "Political Affairs," that each member should read.

Q. Now with reference to this educational program that we have just been talking about, are books, periodicals and so forth, used at that time?

A. Most of the time "Political Affairs" is used,
733 in the educational period, unless some other article was preferred, such as the draft resolution, or some other subject suggested by the Section.

The Court: You should accelerate your questions, sir.

Mr. O'Donnell: Yes, your Honor, I will.

By Mr. O'Donnell:

Q. With reference to the educational programs, do you have any—did you receive any instructions from anybody else in connection with what your educational program would be?

A. Well, they had workers' schools.

Mr. Abt. Just a moment. I believe that could be answered yes or no, your Honor.

The Court: Yes or no?

The Witness: Yes.

By Mr. O'Donnell:

Q. And from whom?

A. From the club president or educational director.

Q. Do you know where they received their instructions?

Mr. Abt: I object.

The Court: Sustained.

By Mr. O'Donnell:

Q. If he knows—

734 The Court: Sustained.

By Mr. O'Donnell:

Q. Now I am going to show you a group of Government Exhibits which are in evidence, and ask if you can identify them.

I show you what has been marked as Government Exhibit 18, the "Communist Manifesto" and ask you if you have ever seen a copy of that before?

The Court: Then go on to Exhibit 19, and ask him if he has seen those.

The Witness: Yes.

By Mr. O'Donnell:

Q. Exhibit 19 is "Foundations;" Exhibit 23 is "State Revolution," and Exhibit 22, History of the C. P. S. U.?

A. Yes, sir.

The Court: Have you seen all of them?

The Witness: Yes, sir.

The Court: All right.

By Mr. O'Donnell:

Q. Are you acquainted with all of these books?

Mr. Abt: I'm sorry, I didn't hear that.

735 By Mr. O'Donnell:

Q. Are you acquainted with all of these books?

A. Yes.

Q. Have you used these in connection with your educationals in the clubs?

A. Yes.

Q. Now in connection with your discussions in the clubs, as well as your educationals, have you ever used this publication of the Communist Party of 1949?

A. I don't remember.

Q. I show you what has been marked as Government Exhibit 45, received in evidence, and ask you if you have ever seen a copy of that before?

A. Yes, I read it. I received it at the club meeting.

Q. And you read that?

A. Yes.

Q. Was this ever discussed in your club meetings?

A. I don't remember that.

Q. Now did you refer to "Political Affairs" and "The Daily Worker"?

Mr. Abt: I object.

The Court: Sustained.

Mr. O'Donnell: If he knows.

736 I asked him if he knows where these came from.

The Court: I beg your pardon?

Mr. O'Donnell: I was asking him if he knew—

The Court: I know.

By Mr. O'Donnell:

Q. In addition to the "Daily Worker" and "Political Affairs," within the State of Illinois are there other Communist Party publications?

A. Yes, there is the "Forum," the "Party Forum."

Q. I will show you what has been marked as Government Exhibit 60 for identification, and ask you whether or not you have ever seen this before?

A. Yes, sir.

Q. And where did you see it?

A. I received it at the club meeting.

Q. I will show you a group of these—

A. This one I received (indicating)—

Q. You received this one yourself?

A. Yes, sir.

Q. Now Government Exhibit for identification, which is the "Party Forum", May 26, 1949,—

Excuse me, your Honor, we will try to get these all

737 in at once.

By Mr. O'Donnell:

Q. I show you what has been marked as Government Exhibit 57, which purports to be the "Party Forum" October 22, 1949, and ask you if you have ever seen this before?

A. Yes, I recognize it.

Q. Did you receive it?

A. Yes, sir.

Q. Where did you receive it?

A. I don't remember now, where I received it. I received it; I turned it in to the Bureau.

Q. You received it at the Communist Party club?

A. Yes, sir.

Q. I might ask you this, preliminarily—

A. Pardon me; it might have been the Communist Party Club or the UAW Section meeting.

Q. Is that of the Communist Party?

A. Of the Communist Party.

Q. I might ask you preliminarily if you received all

of these Exhibits I am showing you, and which I have discussed with you, did you receive them at the Communist Party Club meetings?

A. Yes.

738 Q. I show you what has been marked as Government Exhibit 58, which is the "Party Forum," which purports to be the "Party Forum" dated April 14, 1950—

Mr. Abt: It is what?

Mr. O'Donnell: "Party Forum" April 14, 1950, and I will ask you if you have seen that before?

The Witness: Yes, sir, this one I received as the "Willner's Hall."

By Mr. O'Donnell:

Q. I show you what has been marked as Government Exhibit 64, which purports to be the "Party Forum" dated December, 1951, and ask you whether or not you have seen this befo ?

A. Yes, sir.

Q. Under the same circumstances?

A. This one I received in the club.

Q. I show you what has been marked as Government Exhibit 59, which purports to be "Party Forum" and ask you if you received that?

Mr. Abt: What date, Mr. O'Donnell?

Mr. O'Donnell: I don't think it has a date. It doesn't appear to have a date on it.

739 By Mr. O'Donnell:

Q. I will ask you if you received this?

A. Yes, sir.

Q. I will ask you to examine the rear of the Exhibit and I will ask you whether or not your initials appeared on it?

A. Yes, sir, my initials.

Q. Did the initials indicate the approximate time when you received this?

A. Yes, sir.

Q. Would you mind taking a look at those initials and telling us what that date indicates?

A. October 13, '51.

Q. I will show you what has been marked as Government Exhibit 65, which purports to be "Party Forum" for January, 1952, and ask you whether or not you have seen that before.

A. Yes, sir, I received this in the club meeting in February, 1952.

Q. I show you what has been marked as Government Exhibit 66 for identification, which purports to be "Party Forum" dated April, 1953, and ask you whether or not you have seen this before?

A. Yes, sir, I received this on April 26, 1953.

740 Mr. O'Donnell: At this time, your Honor, we will offer these in evidence and I will show them to the Defendant at this time.

We would like to read certain passages from them, but I would imagine it wouldn't be practical to do that until they have taken a look at the Exhibits themselves.

Mr. Abt: May I make this request, your Honor, that Mr. O'Donnell indicate to me the passages from which he proposes to read, so that we may examine them in the recess and then the reading can take place after the recess.

Mr. O'Donnell: I think that on our list as originally submitted, your Honor, we have indicated pages, and in some cases the articles, from which we were going to read.

Mr. Abt: In some cases, but not in all cases.

Mr. O'Donnell: The articles themselves pertain specifically to the Defendant, and in most cases were written by him; however, we will do our best to acquiesce

741 and to further pinpoint the particular passages.

The Court: The articles written by him—generally, what are they?

Mr. O'Donnell: Well, articles in general indicating his position in the Communist Party, and they indicate his position in the Communist Party program, and reflecting the Communist Party program in the State of Illinois, and I think the articles speak for themselves, your Honor.

The passages we would like to read wouldn't be too lengthy, but bearing on his knowledge of the aims and purposes of the Communist Party. That is the reason they are being offered, and which knowledge, of course, goes to the intent of the Defendant in this case.

The Court: What is that?

Mr. O'Donnell: They go then to the question of intent in this case. They bear out his knowledge of the purpose of the Communist Party, and how the purpose of the

742 Communist Party generally is based on Marxism-Leninism, and how it is carried out in—

Mr. Abt: If your Honor please, I object to Mr. O'Donnell arguing now.

Mr. O'Donnell: I am not arguing. I am attempting to indicate what we expect to show to these articles, that is all. It is to show the purpose—

The Court: Well, the only thing that I would think you could tell the Jury is that they referred to so-and-so and so-and-so, without reading it.

Let the jury, if they are admissible, see it.

Mr. Abt: I don't quite get your Honor in terms of "they refer to so-and-so and so-and-so."

The Court: Well, for instance, that it shows—he could state that they are offering it for the purpose of showing such-and-such.

Mr. Abt: I would rather object to that, your Honor, I think.

The Court: All right. Proceed.

743 Mr. Abt: I have no objection to the jury seeing the entire article; in fact, I would ask for that, but I would think that it is objectionable to let Mr. O'Donnell at this time argue as to what he says that the article shows.

The Court: I only thought about the reference to it.

Mr. O'Donnell: I was merely characterizing what I thought they represented.

The Court: You might look them over during the noon recess.

Mr. Abt: Yes, your Honor.

744 By Mr. O'Donnell:

Q. You have testified you joined the Communist Party in 1944, I believe. You actually joined it in 1944?

A. Yes, sir.

Q. What was the name of the Communist Party at that time?

A. Communist Political Association.

Q. And do you recall who was the head of the Communist Political Association in Illinois at that time?

A. Morris Childs.

Q. Do you know who was the head of the Political Association in the United States at that time?

A. Then?

Q. Yes.

A. Earl Browder.

Q. Do you recall how long the Communist Political Association remained in being?

A. I believe it was in 1945, '44 or '45, or maybe before then.

Q. What happened? In the State of Illinois what happened with reference to the Communist Political Association?

A. I remember at one meeting they brought up—

745 it was a functionary meeting, and they brought up the Duclos letter, and the—

Mr. Abt: I am sorry. I didn't hear it, your Honor.

The Court: A little louder.

By Mr. O'Donnell:

Q. Yes.

A. They discussed the letter, Duclos' letter.

Mr. Abt: If your Honor please, I object to any conversations.

The Court: Yes.

By Mr. O'Donnell:

Q. Do you recall what happened with reference to the Communist Political Association in Illinois, what took place?

A. They changed it to the Communist Party.

Q. You recall that was in 1945, is that correct?

A. Somewhere around there.

The Court: The jury will remember the instructions. We will suspend now until two o'clock this afternoon.

(Whereupon a recess was taken to 2:00 o'clock p. m. of the same day, Tuesday, January 18, 1955.)

746 Before Hon. Philip J. Sullivan, Judge, and a Jury.

Tuesday, January 18, 1955
2:00 o'clock P. M.

Court met pursuant to recess.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government;

Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

And thereupon the following proceedings were had herein:—

747 The Court: You may proceed.

Mr. O'Donnell: Your Honor, during the recess period we made available "The Party Forum" that had been marked for identification, and indicated to the defendant these articles we were introducing and those portions that we intended to read to the jury or which we would like to read to the jury.

As to Government's Exhibit 60, "The Party Forum", dated May 26, 1949, is offered as an exhibit as to the heading on the first page and on page 3, an article pertaining to or purporting to have been written by Claude Lightfoot or, rather, an article by Claude Lightfoot including, incidentally, what appears to be his picture. That article continues down on page 4. We would only read part of that, and those parts have been indicated to the defendant.

The Court: What about that?

Mr. Abt: I think the better way would be to wait until Mr. O'Donnell is through.

The Court: All right.

Mr. O'Donnell: The next thing is Government's Exhibit No. 57, "The Party Forum", dated October 22, 1949, containing on what appears to be page 2 an article
748 by Claude Lightfoot, Acting State Chairman of the Illinois Committee (C.P.T.).

We will offer also an article on page 4. I am not sure I indicated that to the defendant on the lunch hour, but it is an article by Claude Lightfoot, Acting State Chairman,

and as to this as with the others we will be offering it as to the masthead and statements that appear thereon.

749 Mr. O'Donnell: On the same basis we will offer Government Exhibit 58, which contains an article by Claude Lightfoot, and we will offer that article, as to that article.

Government Exhibit 64, "The Party Forum", dated December, 1951, we offer it as to the masthead, Report to the District Board, abridged, by Claude Lightfoot, District Executive Secretary, and we will desire to read certain passages to the jury from this article, passages which have been indicated to the defense.

That article continues throughout the paper. We would offer that article in its entirety.

However, we don't intend to read the whole article, but we would like to read some excerpts from that, excerpts which we have indicated.

We offer also Government Exhibit 66 as to the masthead, and an article written by Claude Lightfoot, Executive Secretary, Illinois District, and we will only read a very small portion of that one, which we have indicated to the defendant.

Also Government Exhibit 59, "The Party Forum", a letter to the Party membership by Claude Lightfoot, including a box containing what appears to be his photo-

750 graph. We have indicated a portion of that article that we would wish to read to the jury, and as to the date, that was identified by the witness on the stand at the time he received it.

He was at a Communist Party club, and the date he placed on there was the approximate time he received it.

Mr. Abt: Mr. O'Donnell, I think you told us before lunch you were withdrawing one exhibit?

Mr. O'Donnell: Yes.

Mr. Abt: Which one is it? Just so we know for the record. Give us the exhibit number. That is all that is necessary.

Mr. O'Donnell: We will withdraw at this time Government Exhibit 65.

Mr. Abt: Your Honor, as to the Government's offer we not only don't object to the offer, but we welcome the offer, because the offer consists almost entirely of articles written by Mr. Lightfoot, and we want the jury to see those writings.

The only problem we have is as to the procedure with reference to exhibits, because it is clear from our discussion through the lunch hour that Mr. O'Donnell plans
751 to read only isolated paragraphs to the jury.

I appreciate that we cannot take the time to read it all to the jury. They are quite lengthy.

We do, however, make the following suggestion: one, that the jury receive a copy of each one of these exhibits, so they can examine them themselves and, two, that we have the right on our affirmative proof to read to the jury whatever we wish, such as Mr. O'Donnell has not read.

I wish to say that we would like to have that privilege. We feel that we should have the right to read those parts to the jury, just as Mr. O'Donnell is doing.

The Court: Is there any objection?

Mr. O'Donnell: No, we offer them in their entirety.

Mr. Abt: And so we will be at liberty to read parts of it.

Just a moment. We have found all the copies of the exhibits of "The Party Forum" except that dated October 22, 1949 [illegible] the one dated April 14, 1950. Those are Exhibits 67 and 58.

752 Mr. O'Donnell: I indicate in connection with the photostats, your Honor, we had a provision, prior to the trial, to permit inspection of all documents, and we are perfectly willing to have them inspect all documents, but in the interest of expediting the trial we will provide photostatic copies of the two in question.

Your Honor, if we may, we will reserve the right to read these until a little later on.

The Court: All right. Then do it more rapidly than you have been doing the reading.

Mr. O'Donnell: Yes, sir.

ANTON J. CZARNOWSKI, a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Cont'd) by Mr. O'Donnell.

Q. During your membership in the Communist Party did you attend any Communist Party schools?

A. Yes, sir.

753 Q. Do you recall when that was?

A. That was in 1949.

Q. Do you recall where that school was held?
A. Out on South Park Avenue in the 4900 block.
Mr. Abt: I am sorry, I didn't get that place.
The Witness: In the 4900 Block of South Park Avenue.

By Mr. O'Donnell:

Q. At that school would you explain to us what the purpose of the school was?
A. To teach Marxism-Leninism, fundamentals of Marxism, and other subjects in the program I have turned in.
Q. Did you attend that school?
A. Yes, sir.
Q. Did you take those courses?
A. I took up Marxism-Leninism and Negro liberation.
Q. Now, directing your attention once again to the defendant Lightfoot, when was the first time that you met him, if you recall?
A. The first time I met Claude Lightfoot was on November 30, 1945.
Q. Where?
754 A. He was in the uniform of the United States Army, held the rank of Staff Sergeant at that time.
Q. Where did you meet him?
A. This was a district committee meeting of the Communist Party.
Q. Where was it held?
A. In Chicago.
Q. In addition were there others present, in addition to Mr. Lightfoot?
A. William Patterson was chairman of this meeting, and the principal speaker was Gil Green.
Q. Who was Gil Green at that time?
A. He was state chairman of the Communist Party of Illinois and the northern part of Indiana.
Q. What did Gil Green say in his speech?
A. Gil Green told the meeting that the National Committee arrived at a decision that veterans, Communist veterans who have left the service, should infiltrate the American Legion and Veterans of Foreign Wars, and take over the leadership of these organizations, and he said that Hitler has taken over, has taken over the government of Germany by the aid of veterans.
Q. Now, directing your attention to the year 1946,
755 did you attend meetings at which the defendant Lightfoot was present?

A. Yes, there was a section convention.
Q. And what section was that?
A. The Southwest Section.
Q. Of the Communist Party?
A. Of the Communist Party.
Q. Where was that meeting held?
A. That meeting was held at 3173 South Halsted Street in Chicago.
Q. Were persons other than Communist Party members present at that meeting?
A. No, sir.
Q. Were there speakers at that meeting?
A. Yes, sir.
Q. Do you recall who the speaker was?
A. James Keller. He made a report on the Central Board.
Q. The Central Board of what?
A. The Central Committee of the Communist Party of Illinois.
Q. Do you recall whether or not the defendant Lightfoot spoke?
A. Yes, sir.
756 Q. And what did he say?
A. He referred to the international situation in 1917 to 1921, and he said that the labor movement at that time was more militant, but that the revolutionary movement did not succeed in all movements because of such as we had here, Reuther, Walter Reuther, and Livinshky, with the exception of Russia, but the revolution succeeded under the wise leadership of Lenin and Stalin.
757 Q. Directing your attention to the year 1947, did you attend meetings of the Communist Party at which this defendant was present?
A. Yes, sir.
Q. Do you recall at this time the first meeting that you attended?
A. In 1947, I believe it was the Veterans—Veterans—Communist Veterans' Organization.
Q. I show you what has been marked as Government Exhibit Number 80 for identification, and ask you if you have seen this before.
A. Yes, sir.
Q. And under what circumstances did you see it?
A. I received this by mail.

Q. Does that document refresh your recollection as to the date on which that meeting took place?

A. That meeting took place on April 24, 1947.

Pardon me, your Honor, could I have water? Could I have a glass of water?

The Court: Yes.

Mr. O'Donnell: May I see the document, please?

The Court: Go ahead.

By Mr. O'Donnell:

Q. Where was this meeting held, if you recall?

758 A. In Chicago—in South Chicago.

Q. Do you recall the address at this time?

A. It was at 3133 South Halsted Street, I believe.

Q. Was this a Communist Party meeting?

A. Communist Veterans.

Q. Would you say when you say "Communist Veterans," what you mean by that?

A. Communist Party members who have served in the United States forces.

Q. And were there speakers at this convention or meeting?

A. Yes, sir.

Q. Who spoke?

A. Andy Neuhoff and Ed Starr.

Q. What did Andy Neuhoff say, if anything?

Mr. Abt: Just a moment, I don't know that we have established the presence of Mr. Lightfoot at the time of the speech.

The Court: He has not yet.

By Mr. O'Donnell:

Q. Was the Defendant Lightfoot there?

A. Yes, sir.

Q. What did Mr. Neuhoff say?

A. He said the veterans are very important force,

759 and this can readily be seen in the American Legion and the Veterans of Foreign Wars.

He said that as Dick Crowley told him, a veteran, and especially those who had taken part in battles, and won battle stars, cannot very readily be accused of being un-American. Even admitted Communists, an admitted Communist can say, "Where in the hell were you? I was there. Is that un-American?"

And then it was said that Communists have a better opportunity, or have the advantage of being a spearhead to infiltrate unions, and take over the leadership of unions, and the labor movement in general.

Q. Was he referring to Communist Veterans?

A. Communist Veterans, yes.

Q. I see. Now you mentioned that Ed Starr spoke. Who was Ed Starr at that time?

A. Ed Starr was one of the top functionaries of Illinois and a member of the National Committee.

Q. What did Starr say, if you recall?

A. Ed Starr confirmed the statement made by Neuhoff, saying that it must be recognized that the veterans constitute a very important force, and this can readily be seen in what use Hitler and Mussolini made of their 760 veterans' organizations.

Q. Now directing your attention to the year 1947 again, did you attend any other meetings during that year at which the defendant Lightfoot was present?

A. On July 16, 1947.

Q. Do you recall where that meeting was held?

A. Somewheres in Chicago. I can't—I believe it was in the Ashland Auditorium, I am not sure.

Q. Was the defendant Lightfoot present at this meeting?

A. Yes, sir.

Q. Was there a chairman at this meeting, if you recall?

A. I don't.

Q. Do you recall what, if anything, the defendant Lightfoot did at this meeting?

A. He said that he and several others were called before the Investigating Committee and were told to bring in the files of the Communist Party.

And he told the functionaries they would play hell before they would get those files.

Q. Did he state anything else that you recall at this time?

A. No.

761 He said about functionary—I mean leaders of communities that feel safe to work in the communities as Communists, they should come out as such.

However, if a Communist feels—a leader, feels that it is not safe to come out in the open as a Communist, he should stay under cover until such time when it is safe

to come out without jeopardizing his position as a leader in that community.

Q. Directing your attention to, once again, to the year 1947, did you attend any other meetings of the Communist Party at which Lightfoot was present?

A. There was the 100 year anniversary of Marxism.

Q. Do you recall when that meeting was held?

A. September 11th.

Q. Where was it held?

A. Ashland Auditorium.

Q. Was that in Chicago?

A. Yes, sir.

Q. Were there other persons present?

A. Yes, sir, there was.

Q. Do you recall at this time some of the persons who were present?

762 A. There was John Gates, Gil Green, Claude Lightfoot, and several others. Dick Crowley, I believe, Katzen.

Q. Now who was John Gates at that time?

A. John Gates was then editor of "The Daily Worker" and a member of the National Committee.

Q. National Committee?

A. Of the Communist Party.

Q. Were there any speakers at this convention or at this meeting?

A. John Gates was the principal speaker at this meeting.

Q. What did he say?

A. Well, he reviewed the history of the Communist Parties from the times of Marx and Engels to that date, and he said, referring to the revolution—Russian Revolution, he said that in 1916 there was one Tsar and one Pope. The Bolshevik Revolution liquidated the Tsar but the Pope is still here.

He said that Communism is a science and Communists do not believe in prayer to reach their objectives. They believe in concrete work of getting there.

763 Mr. Abt: Concrete work of what?

The Court: Will you state the last part of that answer? He believed in what?

The Witness: In concrete work to reach their objectives.

He then quoted Lenin that it will take many years of

hard work to establish proletarian governments in the world, and referring to a statement made by Claude Lightfoot, he said that that of establishing a proletarian government in the United States.

By Mr. O'Donnell:

Q. Do you recall anything else he said at that time?

A. He said that the European—Western European nations are puppets of the United States, and that sooner or later they will overthrow their regimes and establish democratic people's forms of government under the guidance of the Soviet Union.

Q. Do you know or recall whether or not Gil Green spoke?

A. Gil Green praised the Soviet Union.

He said that the Soviet Union is a powerful nation
764 today and a leader in world affairs, to be reckoned with, that we should be proud to be Communists, and that he hopes that the next anniversaries—now I don't remember what he said, 150th, 200th anniversary, the next anniversary he hopes to celebrate the Marxism in the United States and the Soviet Republic of the United States.

Q. Do you recall anything else that Gil Green stated?

A. No, I do not.

Q. Directing your attention again to the year 1947, did you attend any further meetings at which the defendant was present?

A. It was the State Convention on November 27th, 28th and 30th, 1947.

Q. Was the defendant present?

A. Yes, sir.

Q. What kind of a convention was that?

A. This was the State Convention of the Communist Party.

Q. Were you a delegate to that convention?

A. Yes, sir.

Q. Did you participate in the convention?

A. Yes, sir.

765 Q. Were there resolutions passed at that convention?

A. Yes, sir.

Q. I will show you what has been marked as Government Exhibit No. 69, which purports to be a document which certifies that the bearer is a duly accredited delegate

to the 1947 State Convention, and I ask you if you have ever seen that before.

A. Yes, this is my delegate's card.

Q. Where did you receive it?

A. I received it at Ashland Auditorium at the convention.

Q. Did you receive it before you went to the convention or at the convention?

A. At the convention, at the registry.

Q. With reference to the resolutions concerning which I just asked you, I will show you what has been marked as Government Exhibit No. 87, and ask you whether you can identify or I ask you—excuse me, I will withdraw that statement.

I show you what has been marked as Government Exhibit No. 87, which purports to be and is a group of papers, and I ask you if you have seen that before.

766 A. Yes.

These are the resolutions that I received at conventions—at that convention.

Q. Do you know whether or not these resolutions were passed at the convention?

A. Yes, sir.

Mr. O'Donnell: I would like to offer this delegate's card for the 1947 convention as well as the resolution.

Mr. Abt: No objection to the card, your Honor. That is Government Exhibit 69 for identification.

The Court: It may be received.

Mr. Abt: The resolutions we have not yet seen.

Mr. O'Donnell, are you planning to do anything with these immediately?

Mr. O'Donnell: We plan at a later time to read from portions of that, small portions of that.

We can withhold that reading until a little bit later, possibly at some time when the witness is not on the stand. It doesn't necessarily have to be done when he is on the stand.

767 Mr. Abt: I am just thinking in terms of expediting matters, your Honor.

This is an Exhibit not on the government's list, and that we have not seen.

Mr. O'Donnell: This was on the list that was submitted to the Court prior to the trial.

Mr. Abt: I am only suggesting that perhaps we can pass this for the moment, until we have had an opportunity to examine it.

The Court: You may. I will reserve my ruling.

By Mr. O'Donnell:

Q. Were there any elections at this convention?

A. Yes, sir.

Q. With reference to the Defendant, Claude Lightfoot, what, if anything, was done in connection with these elections?

A. He was elected to the State Board.

Q. The State Board?

A. The State Board of the Communist Party of Illinois.

Q. Did you vote for him yourself?

A. Yes.

768 Q. It was an open ballot?

How was he elected? How was the election handled?

A. I cannot recall that right now.

Q. Now were there any speakers at that convention?

A. Yes.

Q. Who spoke?

A. Gil Green.

Q. What did Gil Green say, if you recall?

A. Gil Green urged—pressed the importance of education in Marxism-Leninism for members of the Communist Party. He said that the unions are falling into the hands of the social democrats; that Party members should take more active part in the unions; he attacked the Marshall Plan and accused the Truman Administration—

Mr. Abt: Just a moment, your Honor. I object to the characterizations.

The Court: Yes.

Mr. Abt: He said he accused—

The Court: What did he say?

By Mr. O'Donnell:

Q. Without characterizing, just say what he said.

A. He said that Truman is following an imperial-
769 istic foreign policy; that the Marshall Plan was originally created to feed hungry people, but it is being used against—to rearm Fascist forces against the Soviet Union; Greece and China are examples of people's struggle against British and American imperialists.

770 Q. I direct your attention to the year 1948. Did you attend any meetings at which the defendant Lightfoot was persent?

A. Yes, there is a couple of them, or three.

Q. Now—.

The Court: Where were they?

The Witness: A couple of meetings.

The Court: The first one, where was it?

The Witness: I haven't said.

The Court: I want you to say.

The Witness: It was in Chicago.

The Court: Who were there?

Mr. Abt: May we have the approximate date, your Honor?

The Court: Do you know about when it was?

The Witness: I believe it was March 21st.

The Court: And where in Chicago?

The Witness: At the Lithuanian Hall, I believe.

The Court: Where is that?

The Witness: That is at 3133 South Halsted.

The Court: Who were there?

The Witness: Claude Lightfoot — there was Claude Lightfoot there and—

771 The Court: Go ahead and ask the questions with some rapidity.

By Mr. O'Donnell:

Q. And do you recall who else was there?

A. Sir?

Q. Do you recall who else was there besides Claude Lightfoot?

A. I believe Gil Green was there, I am not sure.

Q. Do you recall if there were any speakers at this convention or that meeting?

A. Gil Green—I mean, Claude Lightfoot was the speaker.

Q. What did he say, if you recall?

A. I don't recall that.

Q. You don't recall what he said at that particular meeting?

A. I can't just think of it.

Q. Directing your attention again to the year 1948, did you attend any other meetings of the Communist Party at which the defendant Lightfoot was present?

I will show you what has been marked as Government Exhibit 84, which purports to be a letter, a mimeographed letter, and ask you if you have ever seen this before?

772 A. Yes, I saw it.

Q. Can you identify it?

A. Yes, it is my signature there.

Q. Did you receive that yourself?

A. Yes, sir.

Q. Where did you receive it?

A. I received it by mail. It was the 1948 State Convention.

Q. Does that refresh your recollection as to the meeting?

A. Yes, sir.

Q. When was that meeting held?

Mr. Abt: May we see the document?

By the Witness:

A. At the Ashland Auditorium on November 20, 1948.

By Mr. O'Donnell:

Q. Did you attend it?

A. Yes, sir.

Q. Were you a delegate to that convention?

A. Yes, sir.

Q. I show you what has been marked as Government Exhibits Nos. 80 and 81, which purport to be delegate cards, and ask you if you have seen those before?

773 A. Yes, sir, they are my delegate cards.

Q. Delegate cards to what?

A. To the State Convention of the Communist Party.

Mr. O'Donnell: I would like to offer these in evidence, your Honor, the delegate cards and the letter.

Mr. Abt: Mr. O'Donnell, the handwriting on the back of these cards. I presume, is that of the witness, is it not?

By Mr. O'Donnell:

Q. Is that your handwriting on the back of these cards?

A. Yes, sir.

Mr. Abt: Would you ask him whether he put that handwriting on before he turned those cards over to the FBI?

By Mr. O'Donnell:

Q. Did you put the handwriting on before you turned those cards over to the Federal Bureau of Investigation?

A. Yes, sir.
Q. It is your handwriting?
A. Yes, sir.
Mr. O'Donnell: Do you feel all right, sir?
The Witness: I feel all right.
774 Mr. O'Donnell: We offer these, your Honor.
The Court: Any objection?
Mr. Abt: We have no objection to the cards, your Honor, except for the handwriting on the back of them.
The Court: All right, they may go in.
Mr. Abt: As to Government Exhibit 84, this notice of the convention, we don't think it has any materiality or relevancy, your Honor.
Mr. O'Donnell: It is a statement concerning the convention, and it has other material with regard to the convention from which I would like to ask him a question or two in connection with the convention.
The Court: Go ahead with your questions.
Mr. Abt: I don't think we need the document in evidence to enable Mr. O'Donnell to ask the questions.
The Court: I don't think so either.
Mr. Abt: I don't think he is entitled to corroborate his own witness, particularly before the witness' credibility on this question has been attacked.

By Mr. O'Donnell:

Q. Now directing your attention to this convention,
775 was the defendant Lightfoot present?
A. Yes, sir.
Q. Were there any other persons present?
A. Yes, sir.
Q. You were a delegate to this convention?
A. Yes, sir.
Q. Now were there speakers at this convention?
A. Claude Lightfoot was the speaker at this convention.
776 Q. Do you recall what he discussed at this convention?
A. He said that the failure of the Marshall Plan to materialize in Europe, and the failure of the World Imperialists—
Mr. Abt: I'm sorry, I just don't hear you.
The Court: Of the world what?
The Witness: The World Imperialists.

The Court: Imperialists?

Yes, go ahead.

The Witness: I think I have got mixed up in some of these meetings, now.

By Mr. O'Donnell:

Q. Well, directing your attention just to this particular convention, what took place there, if anything, with regard to the Communist Party?

A. Well, there was the creation of a new organization at this convention.

Q. And what was this new organization?

A. Claude Lightfoot was appointed as a regional director, one of the three regional directors of a new set-up of an organization that covered all shop branches in the fourteen basic industries.

777 Some of these shop branches printed their own paper.

Mr. Abt: Now, your Honor, I think the witness has answered the question.

The Court: Yes. The latter part may go out.

By Mr. O'Donnell:

Q. Now do you recall what they called this organization?

A. That was the Regional Organization of the Shop Branches.

Q. Were there other persons appointed to this in addition to Claude Lightfoot?

A. Two others. There were Leon Katzen, the gentleman sitting at the table, and Al Rubio.

Q. Now was the purpose for which this was set up discussed at the convention?

Mr. Abt: Yes or no, your Honor.

The Court: Pardon me?

Mr. Abt: It calls for a yes or no answer.

The Witness: Yes.

By Mr. O'Donnell:

Q. And as discussed at the convention, what was the purpose of this new organization?

778 Mr. Abt: I object.

The Court: Sustained as to form.

Mr. O'Donnell: Well, your Honor, I think this goes

to the activities of the Defendant in the Communist Party.

The Court: You can ask him what was said about it.

By Mr. O'Donnell:

Q. What was said about it?

Mr. Abt: By whom, your Honor?

The Court: Yes.

By Mr. O'Donnell:

Q. By whom?

Q. What was said about this new organization at the convention?

A. Well, that—

Mr. Abt: May we first know, your Honor, who spoke on the question?

The Court: I beg your pardon?

Mr. Abt: May we first know who spoke on the question at this convention?

The Court: Yes.

State who is talking when you say what was said.

779 The Witness: I don't remember who spoke on this question, now.

By Mr. O'Donnell:

Q. Was there a discussion on the floor as to this new organization?

A. Yes, sir.

780 Q. Was it put to a vote?

A. Yes, sir.

Q. Of the delegates?

A. Yes, sir.

Q. You were one of the delegates, were you not?

A. Yes, sir.

Q. Did you vote in connection with this new organization?

A. Yes, sir.

Q. What was the purpose it was voted for?

Mr. Abt: I object.

The Court: He may answer that.

By the Witness:

A. To organize shop branches, Communist branches in the shop, the different shops, especially in those basic industries. The steel industry was placed No. 1.

By Mr. O'Donnell:

Q. Do you recall some of the other industries?

A. Rolling stock, power, electricity, packinghouse.

Q. Now was this a new setup or a new organization put into effect?

A. Yes.

Q. Did you have anything to do with it?

781 A. I belonged to the shop branch.

Q. Under this new organization?

A. Under this new organization.

Q. What were your duties in the shop branch in connection with this new organization that was set up?

A. To lead the workers to thinking—to the program of the Communist line, the program that was set up by the Communist section, Industrial Section, then brought forth to the clubs, and members from these different clubs contacted workers to draw them to their side.

Q. Where were the members in your club employed?

A. The majority of them were employed at the Electromotive Division, General Motors Corporation, and one at Page.

Q. Did you receive any instructions concerning this new program?

A. Yes.

Q. From whom did you receive it?

A. In the clubs.

Q. Do you know from where the clubs received their instructions?

A. There was always a section organizer along in 782 the meeting who was responsible for certain districts of industry.

Q. Who was the section organizer at that time?

A. The organizer in charge of our district was Carl Schmiess, Irving Herman and Al Rubio was in charge of that section.

Q. Were these men you just mentioned members of your union?

A. No, sir. Well, Al Rubio was.

Q. Were the others?

A. No, sir.

Q. Did you ever—strike that.

Now directing your attention to the year 1950, did you attend any meetings at which the defendant Lightfoot was present?

A. Yes, sir.
Q. Do you recall the first time you attended a meeting at which he was present?
A. Let me thing. Could you—
Q. Well, I will ask you this:
Do you recall any meetings that you attended in 1950 at this time?
A. I attended two or three meetings where Claude
783 Lightfoot was present.
Q. Now for the purpose of refreshing your recollection, are you acquainted with a person by the name of Elizabeth Gurley Flynn?
A. Yes, sir.
Q. Did you attend any meetings in 1950 at which she was present?
A. That was her birthday, on August 26th, now I recall.
Q. Where was that meeting held?
A. That was held at the Hirsch Lyceum on Hirsch Street.
Q. Is that in Chicago?
A. Yes, sir.
Q. Now, were there any speakers at that meeting?
A. Claude Lightfoot was at that meeting and several others.
Q. Were there any speakers at that meeting?
A. Claude Lightfoot was the chairman of this meeting and Elizabeth Gurley Flynn spoke; Helen Rubio and several others.
Q. Do you recall at this time what Elizabeth Gurley Flynn stated?
The Court: Do you recall what?
784 By Mr. O'Donnell:
Q. Do you recall what Elizabeth Gurley Flynn stated?
A. She expressed a hope to live long enough to see world Socialism.
Q. And who was she at that time?
A. She was a member of the National Committee.
Q. You say she was—I didn't hear what you said, I am sorry.
A. She was a member of the National Committee of the Communist Party.
Q. Now directing your attention to the year 1950, did

you attend any other meetings at which the defendant Lightfoot was present?

A. Yes, sir.

785 Q. Do you recall the approximate date?

A. It was December 21.

Mr. Abt: December 21st?

The Witness: December 21st.

By Mr. O'Donnell:

Q. Before referring to that, I will show you what has been marked as Government Exhibit Number 63, which purports to be a booklet by Claude Lightfoot, and I will ask you if you have ever seen this before?

A. Yes, sir, it is written by Claude Lightfoot.

Q. Did you receive a copy of this book?

A. Yes, sir; I purchased it.

Q. Now for the purpose of refreshing your recollection, I will ask you to look at the inside page there and take a look at the "Note".

A. That is true. I read this book.

Q. Does that refresh your recollection as to any other meeting you attended in 1950?

A. In 1950? That is December 21st.

Q. With reference to this book, I will ask you to look at that and see if it refreshes your recollection as to any meeting you attended?

A. Well, I attended the meeting on November 10th. I attended this meeting here (indicating). I thought

786 I said that.

Q. Do you know where this meeting was held on November 10, 1950?

A. At the Ashland Auditorium, I believe.

Q. Do you know the purpose of the meeting?

A. That was the 33rd anniversary of the Russian Revolution.

Q. Was the Defendant Lightfoot present?

A. Yes.

Q. Do you recall whether or not he spoke?

A. Yes.

Q. Do you recall what he said?

A. That is the speech, right in that book.

Q. The speech that he made?

A. Yes, sir.

Q. Do you recall whether he said anything additional, other than what was said in this speech?

A. Well, yes, I recall that he said it was brought about by the lower class to oust the upper class under the wise leadership of Lenin and Stalin.

Q. Did he make any reference to the—excuse me.

A. Pardon me.

And he said that the capitalists cannot get along
787 without—the capitalist countries cannot get along without waging wars, and so the last two wars have been—

Mr. Abt: If your Honor please, I am not clear now whether the witness is testifying as to the contents of the book, in which case—

The Court: Is this something in addition to what is in the book?

The Witness: Well, that is what I heard from him.

The Court: Yes, sir.

Mr. Abt: I still don't think it is clear, your Honor.

The Court: It is not in the book.

The Witness: I don't know whether that is in the book or not.

The Court: But he is talking?

The Witness: Yes.

The Court: Go ahead.

Mr. Abt: Again, if your Honor please, the best evidence of what he said is what is in the printed portion of his book—I mean, the material contained in the book, unless the witness testifies that he said something in
788 addition to what is contained in the book.

The Court: Well, from my question I understood he said he is not sure that it is in the book, and that is what he is talking about.

789 Mr. Abt: I think under those circumstances, your Honor, the evidence isn't admissible unless he says he is sure the man said something in addition to what is printed and published.

The Court: Oh, no, he may answer the question.

The Witness: He said that this generation went through two wars and that Washington is planning the third World War.

Mr. O'Donnell: Your Honor, we will offer Exhibit 63 at this time, which purports to be an article by Claude Lightfoot, and we will offer it in its entirety.

We only wish to make reference to a brief portion, if at all.

Mr. Abt: No objection, your Honor, with the same

understanding that we had with reference to the other documents, that the ladies and gentlemen of the jury have a chance to examine them, and that we have an opportunity to read from them.

The Court: All right.

Mr. O'Donnell: The title of this exhibit is "An American looks at Russia" by Claude Lightfoot. "Can We Live Together in Peace?"

790 On the inside page it has a note: "This pamphlet contains the text of a speech delivered in Chicago on November 10, 1950 by Claude Lightfoot, State Secretary of the Communist Party of Illinois, on the occasion of the 33rd Anniversary of the Russian Revolution.

"Published by New Century Publishers, 832 Broadway, New York 3, New York, January 1, 1951."

Mr. Abt: I wonder if the jury may have that now, your Honor?

Mr. O'Donnell: I would just like to ask a question or two, and then they may have it.

The Court: I didn't hear you.

Mr. Abt: I wonder if the jury might have the exhibit now?

By Mr. O'Donnell:

Q. You heard me just read the note in this book?

A. Yes, sir.

Q. With reference to Claude Lightfoot, State Secretary of the Communist Party of Illinois. Was he State Secretary of the Communist Party of Illinois at that time?

791 A. As far as I knew he always was a top official of the Communist Party.

Mr. Abt: I object, your Honor.

The Court: Strike it.

By Mr. O'Donnell:

Q. Do you know whether or not at this time, November 10, 1950, he was State Secretary of the Communist Party of Illinois?

A. Yes, sir.

Q. Now directing your attention to the year—before I go into that, I would like to go back just a moment and direct your attention to the school that you testified you attended in 1949.

Do you recall that testimony now?

A. Yes, sir.

Q. At that school were there any outlines used?
The Court: Were there what?
Mr. O'Donnell: Any outlines used, study outlines.

By the Witness:

A. Yes.

By Mr. O'Donnell:

Q. Were these given out at the school?
Were these circulated at the school or disseminated
792 —I will withdraw that.
I will ask you this: Were you given an outline or outlines at the school?
A. Yes, we were given books to study.
Q. Were you given outlines?
A. Outlines.
Mr. Abt: May we have the date of that school, your Honor, so we can have it in the record?
The Court: When was that?

793 By Mr. O'Donnell:

Q. I will show you now what has been marked Government Exhibit 74 and ask you if you can identify that or if you have seen that before.
A. Yes, this is a program of the school that I received.
Q. Was that the school that you attended?
A. Yes, that was the school that I attended, 4941 South Park.
Q. How can you tell?
A. I wrote that down.
Q. You previously testified you took a course in Marxism-Leninism, as I recall?
A. Yes, sir.
Mr. O'Donnell: At this time I would like to offer this exhibit into evidence, your Honor.
Mr. Abt: I object, your Honor, on the ground that no connection has been established between this exhibit and the defendant. There is no foundation.
Mr. O'Donnell: I just asked him if he attended the school, and he said "Yes."
Mr. Abt: The witness attended the school?
Mr. O'Donnell: Yes.
794 Mr. Abt: There is no connection between this school and Mr. Lightfoot.
Mr. O'Donnell: At this time he was a functionary of

the Communist Party of Illinois, and one of the top functionaries, and this witness testified that throughout the entire time he had been a functionary.

Mr. Abt: There is no evidence that he even saw this or had any knowledge even of the school.

Mr. O'Donnell: I will ask a few more questions.

The Court: All right.

By Mr. O'Donnell:

Q. Do you know a person by the name of David Englestein?

A. Yes, sir.

Q. Who was David Engelstein?

A. He was State Education Director, if I am not mistaken.

Q. Is that of the Communist Party?

A. That is of the Communist Party.

Q. Was he of the District Committee of the Communist Party?

795 A. Was he what?

Q. On the District Committee of the Communist Party?

A. Yes, sir.

Q. Was that the same District Committee that the defendant in this case, Claude Lightfoot, was on?

A. Yes, sir.

Q. I will ask you this: This school you attended, was this a Communist Party school?

A. Yes, sir.

Q. Under what circumstances did you go to the school yourself?

The Court: Haven't you covered that?

Mr. O'Donnell: It is just a question of connecting up this school with the defendant, your Honor.

The Court: I think you have covered it.

Mr. O'Donnell: On the basis of that, I will offer this once again, your Honor.

Mr. Abt: The same objection, your Honor. There is no connection shown with the defendant.

The Court: The connection, I take it, is that it came from a Communist School?

796 Mr. O'Donnell: That is right, your Honor.

Mr. Abt: I don't think that is sufficient.

The Court: It may be received.

797 By Mr. O'Donnell:

Q. Now, with reference to this school, what has been marked here—I will show you what has been marked as Government's Exhibit 89, which purports to be a group of papers under the title of "Chicago Workers School, January, 1949" and ask you if you have ever seen that before.

A. Yes, sir.

Mr. Abt: What number is that? I am sorry, Mr. O'Donnell—what number is that?

Mr. O'Donnell: That is Exhibit Number 89.

By Mr. O'Donnell:

Q. Did you receive a copy of this?

A. This is the copy I received.

Q. Where did you receive it?

A. I don't recall now where I received it.

Q. Did you receive it in connection with the school?

A. Yes, yes.

Q. Did you use this document in connection with the school?

A. Yes, sir.

Q. You testified you took a course in Marxism-
798 Leninism, did you not?

A. Yes, sir.

Q. Did you use this document in connection with that course?

A. Yes, sir.

Mr. O'Donnell: I would like to offer this document at this time, your Honor, as Government Exhibit 89, the "Chicago Workers School, January, 1949," which purports to be an outline.

Mr. Abt: I have the same objection, your Honor. There is no connection whatsoever which has been established between this document and the Defendant.

The Court: But you claim the only connection is an Exhibit from a Communist organization?

Mr. O'Donnell: From the Communists, yes.

The Court: For that purpose, it may go in.

Mr. Abt: I am not quite sure I understand the limited purpose.

The Court: That goes in as it concerns the Communists and the Communist Party.

Mr. Abt: Just one other thing.

799 These last two Exhibits, Government's Exhibits 74 and 89, were Exhibits which we were not notified about,

and we don't have copies of. We would like to have photostats supplied to us, and I may want to use those on my cross-examination.

Mr. O'Donnell: We will do the best we can. We are once again saying they were on your list.

The Court: But they were not on mine.

Mr. O'Donnell: That is correct.

Mr. Abt: Will they be available to me now?

Mr. O'Donnell: We will make arrangements as soon as practicable.

The Court: Do you have them available now?

Mr. O'Donnell: It will take a few minutes to get them.

The Court: While you proceed, have one of your associates get them up here.

Mr. Abt: The same thing is true with respect to Government's Exhibit 87.

The Court: Yes.

800 Mr. Abt: It is just impossible for us to cross-examine until we have an opportunity to look at those Exhibits.

Mr. O'Donnell: I might remark, your Honor, that at this time these Exhibits are here in court and available by reason of the fact they have been offered to the Defendant.

The Court: I still think you should give them a copy, in view of the fact they have not been given to them before, or pointed out.

Mr. Abt: Your Honor will recall we had exactly that understanding at the time.

The Court: That is right.

801 By Mr. O'Donnell:

Q. Will you—

Mr. Abt: What was it?

Mr. O'Donnell: I have another point that Mr. Parsons brings to my attention, your Honor.

There are certain handwritten notations on some of these documents that don't pertain either to the document itself or to the witness. They are administrative in nature, and in this respect the grand jury made them exhibits, and we would offer these exhibits without such notations.

The Court: All right.

By Mr. O'Donnell:

Q. Mr. Czarnowski, you stated with regard to "Political Affairs" that was one of the books you purchased and disseminated in the Communist Party?

A. Yes, sir.

Q. I will show you now what has been marked Government's Exhibit 93 and ask you if you have ever seen a copy of this book before?

A. Yes, sir.

Q. What is it?

802 A. This is "Political Affairs", February 1951.

Q. Is "Political Affairs" one of the books that was discussed in your club?

A. Yes, sir.

Mr. O'Donnell: I would like to offer this in evidence at this time, your Honor. At the present moment I am offering it for the limited purpose of reading to the jury the last page in the exhibit.

The Court: Is that the only purpose for which you offer it?

Mr. O'Donnell: At this time, yes, your Honor.

Mr. Abt: We have no objection.

The Court: All right.

Mr. O'Donnell: I would just like to read briefly what it says here: It is "Political Affairs" and in the front it says "15th National Convention, Communist Party U. S. A. organized to teach, Political Affairs, February, 1951."

The inside frontispiece indicates "Vol. XXX, No. 2, February 1951, Political Affairs", and it says "A
803 magazine devoted to the theory and practice of Marxism-Leninism".

On the back page to which I have referred it says "National Committee Communist Party U. S. A. Elected at the 15th Convention, December 28-31, 1950. William Z. Foster, National Chairman; Eugene Dennis, General Secretary; Gus Hall, National Secretary; Henry Winston, Organization Secretary; John Williamson, Labor Secretary; Benjamin J. Davis, John Gates, Irving Potash, Elizabeth Gurley Flynn, Gilbert Green, Jack Stachel and Carl Winter.

"Alternate Members of the National Committee: Archie Brown, Fred Fine, Claudia Jones, James Jackson, Pettis Perry, William Schneiderman, Sid Stein and Martha Stone."

The Court: The jury may recess for a few minutes. You may step down if you wish.

(A short recess was taken.)

804 The Court: Mr. O'Donnell, how much longer do you think you will be with this witness?

Mr. O'Donnell: Not too much longer.

We would like to do a little reading, though, before we finish the redirect examination.

The Court: All right.

I don't see the purpose of it.

Mr. O'Donnell: With reference to the articles that were written by the defendant himself. The purpose would be to show his continuous familiarity with Marxism-Leninism and its application.

The Court: What would that have to do with the witness?

Mr. O'Donnell: Well, he introduced the articles. Of course, the articles are introduced through him.

The Court: Go ahead.

Mr. O'Donnell: I trust we won't be too extensive.

I think we gave you everything you asked for, if you will check it, Mr. Abt?

Mr. Abt: We will check it.

805 We don't have the resolutions of the 1948 Convention.

Mr. Keating: Do you need that now?

Mr. Abt: We need it before we cross-examine, yes.

The Court: O. K.

Mr. O'Donnell: Thank you, your Honor.

By Mr. O'Donnell:

Q. Now directing your attention once again to the year 1951, I think you have previously testified that you attended a banquet on May 26, 1951.

Thereafter did you attend any other meetings?

A. Yes.

Q. At which the defendant Lightfoot was present?

A. Yes, sir.

Q. When was that?

A. It was on June 11, 1951.

Q. Where was that meeting held?

A. That was, I believe it was in the Ashland Auditorium in Chicago. No, I am sorry, in the Forum Hall.

Mr. Abt: Sorry, I didn't get the name.

Mr. O'Donnell: Forum Hall.

The Witness: Forum Hall.

806 The Court: What hall?

The Witness: Forum Hall.

The Court: Where is it?

The Witness: That is on 432 East 43rd Street, I believe.

By Mr. O'Donnell:

Q. Is that in the City of Chicago?

A. Yes, sir.

Q. Northern District of Illinois?

A. Sir?

Mr. O'Donnell: I will withdraw that.

Mr. Abt: We will stipulate that is the Northern District of Illinois.

By Mr. O'Donnell:

Q. Now, were there any speakers at that meeting?

A. Yes, there was Gil Green, Monty West, and Claude Lightfoot was the chairman.

Q. What did Gil Green say, if anything?

A. Well, what Gil Green said, that we must mobilize the people for peace movement, and Party members should contact labor union leaders, church leaders, and civic leaders, to stir them into a peace movement.

He said "If we cannot prevent war, we must at least 807 delay it for time is on our side."

Q. Did he say who he was referring to when he said "our side"?

A. Well, the Communist side, the Communist Party side.

Q. Did he say that?

A. Sir?

Q. Did he say that himself?

A. Well, the speech was about the Soviet Union, the Communist Party and the United States.

Q. Well, did the defendant Lighfoot speak there?

A. Yes, sir.

Q. What did he say?

A. He addressed Reverend Father Frank Parker, he addressed him as "Comrade Reverend Parker" and told the story of how David slew Goliath with a slingshot, and then he said, "Our slingshots—"

The Court: Our what?

The Witness: Our slingshots.

The Court: Yes, go ahead.

By the Witness:

A. (Continuing.) "—are not as big as the weapons our enemies are using, but we will win at the end in spite of it."

808 At the end of the meeting, he asked all present to rise and sing "The Communist Third Internationale."

By Mr. O'Donnell:

Q. When he referred to "our enemies," did he say whom he was referring to?

A. No, other than the United States.

Mr. Abt: I'm sorry, I didn't get that.

The Witness: He mentioned, when they referred to the United States, they always say either "Imperialist", "Capitalists"—

Mr. Abt: Now, if your Honor please, I move to strike as not responsive.

The Court: Strike it out.

Mr. O'Donnell: I will repeat the question I asked you.

By Mr. O'Donnell:

Q. In this speech to which you have just been testifying, did he say who he was referring to when he referred to "our enemies"?

A. To the reactionary forces in the United States.

809 Q. Now from 1945 until May 14, 1954, have you observed any change in the basic objectives of the Communist Party of Illinois?

A. No, sir.

Mr. Abt: Your Honor, I object.

The Court: Well, the answer may stand. That is only his opinion.

By Mr. O'Donnell:

Q. I should like to show you at this time Government Exhibit Number 9 for identification, and ask you if you can identify that, or have you seen it before?

A. Yes, sir.

This is "Political Affairs" of June, 1954, has an article of Claude Lightfoot.

Mr. Abt: Just a moment.

Mr. O'Donnell: Excuse me. You can identify this?

The Witness: Yes, sir.

Mr. Abt: What number is that, Mr. O'Donnell?

Mr. O'Donnell: Number 94.

Mr. Abt: All right, I am familiar with it.

Mr. O'Donnell: I will offer this Exhibit with
810 reference to an article by Claude Lightfoot.

Mr. Abt: The entire magazine? Or just the article, what are you offering?

Mr. O'Donnell: The article by Claude Lightfoot, and of course the identification of the magazine itself.

Mr. Abt: I object, your Honor, but only on the ground that this article appears in the June issue of the magazine and has obviously appeared subsequent to the date of the return of the indictment, and on that ground I think it is not applicable.

Mr. O'Donnell: I might indicate to your Honor that we have thought about that; but I think the presumption is pretty strong that this article was written prior to June, 1945, the time that the magazine—

Mr. Abt: Prior to June, 1945?

Mr. O'Donnell: June of 1954, excuse me.

The Court: You will have to make that proof.

Mr. O'Donnell: And for the further reason, your Honor, that it goes to show a continuing state of mind
811 bearing on his state of mind during the indictment.

The Court: As it is now, sustained.

Mr. O'Donnell: Your Honor, at this time we would like to read from a few of these Exhibits.

We may possibly have a question or two of this witness at the conclusion.

He may either remain on the stand or sit down, as your Honor wishes.

The Court: You may step down.

If you want to recall him, you may have that privilege.

Mr. O'Donnell: Thank you, your Honor.

(Witness excused.)

Mr. O'Donnell: Excuse me, your Honor; I just want to be sure these are in chronological order.

I just wish to read from "Party Forum," Exhibit Number 60, volume 2, Number 1, issued by Illinois State Committee—Communist Party, 208 Wells Street, Chicago 6, Illinois, dated May 26, 1949, from an article on page 3 of this Exhibit, an article entitled, "Recruiting and Ideological Work Is Reviewed by Claude Lightfoot."

812 There is a picture there which appears as though it were a picture of Claude Lightfoot.

I am reading from the middle of the first column of that article, the middle of the page.

Mr. Abt: Just a moment, Mr. O'Donnell. Will you tell us again what month and year that is?

Mr. O'Donnell: That is May 26th, 1949.

Mr. Abt: May 26th?

Mr. O'Donnell: Yes, 1949, that is correct.

From the middle of the page—

Mr. Abt: We don't seem to have it, I am sorry.

Mr. Crockett: You didn't bring us a copy of that, did you?

Mr. O'Donnell: Well, I will skip that one for just a moment, and see if we can bring that up later.

Mr. Abt: I don't believe you offered anything from May 26, 1949, Mr. O'Donnell, according to my notes.

Mr. O'Donnell: We will hold that a minute and straighten that out.

Then we refer to Government's Exhibit Number 64, "Party Forum," Volume III, Number 5, issued by the Communist Party of Illinois, Room 201, 208 South Wells Street, Chicago 6, Illinois, December, 1951, an article
813 entitled "Report To The Illinois District Board (Abridged), For a Bolder Fight For Peace," by Claude Lightfoot, District Executive Secretary, and reading from the first column of the first page, towards the end of the page:

"Comrade Lenin a few decades ago forecast with accuracy the nature of the problems that would prove to be the Achilles heel of the entire capitalist system. He pointed out, at that time, that there are three contradictions which will prove fatal to the capitalist system in its imperialist stage. The first was the contradiction of labor versus capital, the class struggle, in the imperialist countries—where the workers either place themselves at the mercy of capital and in so doing sink lower and lower, or they take the path of struggle.

"The second contradiction is the struggle among the imperialist powers for super-profitable areas to which to export surplus capital, for sources of raw materials and for markets for their commodities. And the third is the con-
tradiction between the handful of ruling nations and
814 the vast mass of colonial peoples. The merging of

these struggles, said Comrade Lenin, would lead to the breakdown of the capitalist system."

And the second is on page 3, entitled, under heading, "Forging Greater Unity Negro and White," "Fundamental Change Needed":

"The times require not a return to the old forms but a qualitative leap forward in Negro-white unity. Old standards and norms that were used to measure the growing equality of the Negro people no longer suffice. Half-hearted gestures and minor concessions here and there will not meet the problem.

"The Negro people are demanding fundamental changes and expect their white allies to support them in the struggle, in the full sense of the word.

"Unfortunately some of the social democratic 'theory' regarding the Negro question has crept into the ranks of the Party and especially among some of the leading trade union cadre. How else can we explain the resistance
815 on the part of some of these comrades to help build the National Negro Labor Congress?

"If the working class in general must be won for Negro-white unity, then our Party has a great responsibility.

"We cannot carry out these responsibilities unless we achieve a greater knowledge of the Marxist, Leninist and Stalinist teachings on the National Question. I refer to such classic works as 'Marxism and the National Colonial Question' by J. Stalin, the 'National Question' in 'Foundations of Leninism and the History of the CPSU'. These works, together with the new experiences that have been generated by the Chinese revolution and reflected in the works of Mao Tse Tung and Liu Shao-Chi, plus the Resolution of our Party on the Negro Question, must serve as guiding lights in approaching the Negro Question in the U. S."

Then under the heading, "Major Organizational Questions Facing the Party,"—

Mr. Abt: What page is that on, Mr. O'Donnell?

Mr. O'Donnell: That is on page 6, starting at the
816 third paragraph:

"On the whole it must be said our Party organization has weathered these storms with great courage. There is no other organization on the American scene that could have survived the bestial attacks to which we have been subjected. In this period our membership has shown much

greater initiative, loyalty and steadfastness that serve to inspire all of us. New forces have emerged who have taken over leadership responsibilities and are carrying on their tasks with honor.

"But while we note these positive developments, we must not allow ourselves to fail to use the tried and tested method of Marxist-Leninist work, the method of criticism and self-criticism."

817 The next is the top, third column on the top of page 6, "Struggle Against Negro Nationalism."

"Already we see many signs of developing Negro nationalism. The main way in which to fight this trend is by more vigorously combatting white chauvinism. But it would be a mistake to think that the struggle must not also be waged against Negro petty bourgeois nationalism. For this, too, is a poisonous ideology aiding the white ruling class in dividing the ranks of the workers.

"There are some Negro comrades who have shown a complete lack of understanding of the nature of Negro bourgeois nationalism, and consequently do not struggle against it. The most typical confusion in this respect is the feeling that Negro nationalism is only an outgrowth of white chauvinism. This betrays a failure to understand that while white chauvinism aids and facilitates the growth of Negro nationalism, Negro nationalism itself is an
818 ideology that must be seriously combatted less it accomplish the same objectives as white chauvinism.

"All the tendencies that tend to separate the Negro and white workers serve the interests of the white ruling class. Any attitude among Negro workers which, in essence, says 'go it alone' is but an expression of petty bourgeois Nationalism. In waging a struggle against tendencies of Negro nationalism this we must guard against labeling as Negro nationalist this or that Negro comrade who wages a militant and uncompromising struggle against the inadequacies of our white comrades in the struggle against white chauvinism. The main way to solve this problem is for our white comrades to begin to wage that struggle, and then Negro comrades will not stand out like 'sore thumbs' when they try to do something about white chauvinism.

"The development of struggle against both of these ideologies requires special roles for our Negro and
819 white comrades. Our white comrades must stand in the forefront of the struggle against white chauvinism, our

Negro comrades must stand in the forefront of the struggle against petty-bourgeois Negro nationalism. And by our common fight on both fronts we create the prerequisites for the uniting of the ranks of labor."

And still on page 6, "Best Security Among Masses", third column, bottom of the page:

"The security of our Party does not rest primarily on whatever technical measures we may employ. Above all it rests on how we win over our neighbors, our shopmates, the people, to protect us because we have won their confidence in struggle.

"This is the approach and yardstick that we must now use in order to overcome these weaknesses.

"Perhaps one of the major reasons why we have not helped generate expanded mass activities in this period is the erroneous belief that the Party cannot make, relatively speaking, much progress until the storms surrounding us have subsided."

"Our enemies debate the question as to whether the Communist Party can be more effective or less effective under or above the ground. This is a thoroughly academic question. Yet I have a feeling that there are some in our ranks who have little confidence that we can do much in the present state of affairs.

"The effectiveness of Communist work is not determined by whether we are under or above the ground. The main determinant is the objective situation that exists among the people and how our Party reacts to it. It is these conditions which determine whether our work can be effective, regardless of our position above or underground.

"Let us remember that the Bolshevik Party (CPSU) in 1917 emerged from the underground in February and took power in the short space of eight months. Most of the preparatory work for the seizure of power was done in the conditions of the underground. Let us not forget that the Communist Parties of Europe, especially in France and Italy, won the leadership of the working class in the underground partisan movements—a task they had not been able to accomplish prior to the Nazi occupation of their countries."

Continuing on the next paragraph headed "No Mechanical Comparisons", or the next heading there:

"Of paramount importance to the achievement of the goals we project is the full utilization of the striking power of the Party—

Mr. Abt: Mr. O'Donnell, our marking shows you were going to read that entire section.

Mr. O'Donnell: We are just going to read the last paragraph.

"Of paramount importance to the achievement of the goals we project is the full utilization of the striking power of the Party membership as a whole. We must overcome the lack of mobility (slower lines of communication) that has resulted from security measures. We cannot, how-
823 ever, surmount this obstacle by merely adopting technical measures. One of the most important ways to overcome it is to tighten up the whole Party organization, especially as concerns regular attendance and participation of our membership of club meetings. We have always stressed the Leninist concept of the Party as an organized detachment of the working class. But under today's conditions we cannot stress this principle too much."

The Court: Is that all of that?

Mr. O'Donnell: Yes, sir.

824 (The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

The Court: What do you claim now? What are you attempting to prove, the solidarity of, the power? What about the Negro question, what does that prove in this case?

Mr. O'Donnell: With regard to the passage we have just been reading, we believe this shows the relationship today of the operations of the Party during the entire period with the Marxist-Leninist teachings which we have had testimony about as being the basic teachings of the Communist Party in which the Communist Party theory and practices are based on, and these are articles written by the defendant. It goes to the state of mind, showing the continuation of the intent to use—

The Court: You are reading about the Negro question there.

Mr. O'Donnell: Yes, sir.

The Court: There is a great deal about the Negro question there and I can't see any purpose. They
825 are not on trial.

Mr. O'Donnell: We had testimony from the witness Meyer concerning the question of Negro nationalism in which he stated that the defendant Lightfoot opposed Negro

nationalism on the grounds that it was inconsistent—I am paraphrasing—inconsistent with the objectives of the Communist Party with reference to the Negroes. This short reading that I did just now was just to show the continuity of Mr. Lightfoot's line following the line of the Communist Party on that particular question. We don't intend to read any further along that line.

The Court: I don't think you should. I can't see any purpose. I have been listening very carefully and I can't see what the purpose is. There was something you read about "We must get together and must be allied closely together and study the Communists—" or whatever it is. I can't see any reason or what purpose that would serve here.

Mr. O'Donnell: We have had testimony, your Honor, from the witness Lautner, among others, that in the Communist Party you have a strategic line and a tactical line, but the basic policy of the Communist Party never
826 changes, it is directed towards the ultimate aim, and that is socialism, and to get that they advocate the necessity of overthrowing the bourgeois machinery, in order to get it. That is the policy of the Communist Party, and in order to do that, they attract minority groups. We have read these passages, and we have had testimony that they use the united-front tactics and many other tactics to support their tactical line. That is the only purpose.

The Court: You may go ahead, but I am not impressed with most of that, I will tell you that now.

You may proceed.

Mr. Abt: I want your Honor to understand that as far as I am concerned, I am not objecting because—

The Court: I know you are not.

Mr. Abt: —because I don't believe any of this material being read has any tendency to prove the charge.

The Court: I would curtail it as much as possible.

(The following proceedings were had in open court in the presence and hearing of the jury:)

827 Mr. O'Donnell: We will conclude with this document at this time.

Now, your Honor, from Government Exhibit 59, the last page of that exhibit, "The Party Forum," and also "An Open Letter To the Party Membership by Claude Lightfoot," and this was identified as being received in October, October 15, 1951—

I was just looking at this to see if we could cut this a little short.

Part V:

"Toward Higher Standards of Party Organization.

"The Party in the present period will have to function under conditions of continuous attacks from the enemy.

"This makes necessary new methods of work and a higher standard of performance by every single Party member.

"What are some prerequisites for achieving higher standards?

"First, every Communist must have confidence in the ability of the American working class to stem the rising tide of war and fascism. Moods of pessimism lead
828 to passivity and inactivity and ease the path of the fascists and warmongers. However, confidence cannot be sucked out of the thumb. Our confidence is born out of a mastery of Marxist-Leninist theory, the generalized experience of the international working class."

This article is signed "Comradely yours, Claude Lightfoot, Executive Secretary, Illinois District of the Communist Party."

Mr. Abt: If your Honor please, I don't like to prolong the reading, but again Mr. O'Donnell indicated to us before that he was going to read quite a bit more.

I am not going to ask him to read all of it, but I think at least he ought to finish one paragraph, if he starts it, just to get the connection.

The Court: I think that is his problem. He may read what he wishes and you may read what you wish.

Mr. O'Donnell: Government Exhibit 66, "The Party Forum," with the heading "Issued by Communist Party of Illinois, Old P. O. Box 1132, Chicago, Illinois. Discussion Edition III. Illinois District Communist
829 Party, April, 1953. On the Draft Resolution. A Survey of the Discussion in Illinois by Claude Lightfoot, Executive Secretary, Illinois District."

Just reading the first paragraph,

"The draft resolution of the National Committee on the situation growing out of the presidential elections has evoked a profound discussion in our Party. The searchlight of Marist-Leninist analysis is penetrating into every aspect of Party work. The richness of this discussion will enable us to enter into the struggles of the turbulent era ahead with much clearer knowledge of how to combat the growing menace of war and fascism."

"Party Forum," Volume II, No. 4, issued by the Illinois State Committee, Communist Party, 208 South Wells Street, Chicago, April 14, 1950. This is Government Exhibit 58, and we are offering this as to a letter written by—it states here "State Committee Replies," a letter signed, "Comradely yours," "Claude Lightfoot, State Executive Secretary."

Mr. Abt: You are not reading that, Mr. O'Donnell?

Mr. O'Donnell: Exhibit 57, October 26, 1949.

No. I will not read from that at this time. I think we have already—

Oh, excuse me, I would like to just read from page 4, the article at the bottom of the page:

"Lightfoot elected acting State Chairman. Claude Lightfoot was elected acting State Chairman of the Communist Party of Illinois at a recent State Committee meeting held in Chicago."

Skipping a paragraph:

"Comrade Lightfoot joined the Party in Chicago in 1930."

If your Honor will indulge us for just a minute, we had some other brief reading that we would like to
831 do, and we will see if we can reduce it to a minimum.

I would like at this time, your Honor, to read from Government Exhibit No. 87, the Resolutions?

Mr. Abt: Just a minute, Mr. O'Donnell. Those are the Resolutions?

Mr. O'Donnell: That is right.

Mr. Abt: If you will recall, you offered those and I asked an opportunity to examine them before making my objections to them, if I have any, and it has just been impossible for me to do that up to this time. It is a very lengthy document.

The Court: All right.

Mr. Abt: So I would suggest that unless you have some occasion for the witness to be on the stand, you can read it later.

Mr. O'Donnell: All right.

The Court: You may go to the next. Just delete that and I will permit you to do that later on after they have had an opportunity to examine the documents.

Mr. O'Donnell: Thank you, your Honor.

The witness may resume the stand, and we have no further questions from him at this time.

832 The Court: All right.

ANTON J. CZARNOWSKI, called as a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Mr. Abt: Your Honor, I will start my examination, but I may have to suspend because I haven't had the opportunity to go over all of the exhibits, but I will go as long as I can.

Cross-Examination by Mr. Abt.

Q. Mr. Witness, I want to direct your attention to your testimony about the banquet that was held for Mr. Lightfoot. You recall you testified about such a banquet?

A. Yes, sir.

Q. When do you say that banquet occurred, what date?

A. On May 26th, I believe.

Q. May 26th, when?

A. 1950,

Q. May 26, 1950?

833 A. '50 or '51.

Q. Think about it and tell me, when did it occur?

The Court: To the best of your recollection.

The Witness: 1951.

By Mr. Abt:

Q. May 26, 1951?

A. Correct.

Q. Now when you first testified about this banquet, you testified that it occurred on August 26, 1950, isn't that right?

Mr. O'Donnell: Just a minute. I didn't hear that question.

Mr. Abt: Let the reporter read it.

(Question read.)

Mr. Abt: Did you hear the question, Mr. Witness?

The Witness: Yes.

By Mr. Abt:

Q. You first stated, did you not, that that banquet occurred on August 26, 1950, isn't that what you testified to this morning or this afternoon?

A. I must have got mixed up with the dates.

Q. I know you were mixed up with the dates, that
834 is what I wanted to bring out.

A. Yes.

Q. You first testified, did you not, that the banquet occurred on August 26, 1950?

A. Yes, sir.

Q. And then Mr. O'Donnell showed you the invitation to the banquet, did he not?

A. Yes, sir.

Q. And it was only when you saw the invitation to the banquet that you knew you were wrong about the date of the banquet, isn't that right?

A. Yes, sir,

835 Q. Then you changed your testimony and said that really that banquet occurred about a year later, that is in May, 1951, right?

A. Yes, sir.

Q. Now as I heard your testimony, Mr. Witness, you said at that time, at that banquet, Mr. Lightfoot was elected a member of the National Committee, is that right?

A. Yes, sir, correct.

Q. Now, as a matter of fact, Mr. Witness, I want you to think back to that banquet and tell me whether you were correct when you said that at that banquet Mr. Lightfoot was elected a member of the Communist Party National Committee?

A. As I recall, he was appointed.

Q. At that banquet?

A. At that banquet.

Q. He was appointed a member of the National Committee of the Communist Party at that banquet, that is your testimony, is it?

A. Yes, or may I state that it was announced at that meeting that he is a member of the National Committee.

Q. Now which was it, was he elected or appointed
836 at that banquet?

A. I was not at his election.

Q. I know you weren't at his election, but you were at the banquet, weren't you?

A. I was at the banquet.

Q. What happened at the banquet, was he elected or appointed at the banquet? That is what you told us.

A. It was—

Q. Just a moment.

A. Yes, sir?

Q. Didn't you testify this morning or this afternoon, whenever it was, that Mr. Lightfoot was appointed a member of the Communist Party National Committee at that time, at that banquet?

A. Yes, sir,

Q. Now was that a correct statement of fact?

A. I haven't—I don't believe I have said that he was appointed or elected at that banquet.

Q. Didn't you so testify this morning?

A. I said that he was a National Committee Member at that—.

Q. But didn't you tell us this morning that he was appointed to the National Committee at that banquet?

837 Mr. O'Donnell: Your Honor, I am going to object at this point. I think the testimony has been pretty well gone over at this point.

The Court: I think you have pursued it far enough.

Mr. Abt: I am sorry, your Honor, I didn't know that we had the transcript here.

By Mr. Abt:

Q. Mr. Witness, I will ask you if you weren't asked the following question and if you didn't make the following answer, this morning:

"Q. How do you know this?

"A. I was present at a 20 year service anniversary of Claude Lightfoot in the Communist Party. At this time he was appointed to the National Committee of the Communist Party."

Were you asked that question and did you make that answer this morning?

A. Yes, sir, I did.

Q. Now as I understand you, you say that you were mistaken, that Mr. Lightfoot was not appointed at

838 the banquet, is that right?

A. Yes, sir.

Q. And what do you say happened at that banquet, then, Mr. Witness?

Mr. O'Donnell: I am going to object. I think he is going over the same ground.

The Court: He may answer.

By Mr. Abt:

Q. What do you now say occurred at that banquet with reference to Mr. Lightfoot?

A. At this banquet it was announced that Claude Lightfoot was appointed to the National Committee, as a member of the National Committee. I haven't said that he was appointed at that banquet.

Q. Now, Mr. Witness, I want to show you Government Exhibit 93, which is a copy of "Political Affairs," for February, 1951.

Mr. O'Donnell showed that to you before, did he not?

A. Yes.

Q. I want to call your attention to the last page of that Exhibit, to refresh your recollection, and then I am going to ask you some questions about it.

As soon as you have had a chance to look at it, let
839 me know so I can ask you the questions.

A. Yes, sir.

Q. Are you finished?

A. Yes.

Q. Now, Mr. Witness, since you have had an opportunity to refresh your recollection, is it not a fact that Mr. Lightfoot was not appointed to the National Committee, he was elected?

A. Was he elected?

Mr. O'Donnell: I object, your Honor. The witness stated he wasn't there when the election took place.

The Court: Do you want to modify or change your testimony about that?

The Witness: As I have said—

Mr. Abt: Let me put it this way, your Honor—

The Court: All right.

By Mr. Abt:

Q. Wasn't it stated at the banquet which you attended that Mr. Lightfoot had been elected to a position in the National Committee of the Communist Party, isn't that what was stated?

A. I cannot say exactly what they have said,
840 whether he was elected or appointed.

Q. You don't remember?

A. I—

Q. Just a moment, Mr. Witness.

You don't remember now whether they said he was elected or appointed, is that right?

841 Q. Do you remember whether at that banquet they said that he was made a member of the National Committee or was it some other office?

A. National Committee, that is how I understood it.
Q. That is how you understood it?
A. Yes.
Q. But isn't it a fact, Mr. Witness, that they said at the banquet that he had been elected an alternate member of the National Committee?
A. I do not remember that.
Q. You don't remember that?
A. No, sir. It might have been, but I don't recall it.
Mr. Abt: If your Honor please, may I call the jury's attention to this page which is already in evidence?
The Court: Yes. What is it?
Mr. Abt: Simply—I believe Mr. O'Donnell has already called it to the attention of the jury. This is Government Exhibit 23, the last page of the exhibit, which says:
"National Committee, Communist Party, U. S. A., elected at the 15th National Convention, December
842 28-31, 1950," and down at the bottom "Alternate Members of the National Committee," and under that heading "Alternate Members of the National Committee," is the name "Claude Lightfoot."

By Mr. Abt:
Q. Now, Mr. Witness, I think you testified that you joined the Communist Party in 1943, is that right?
A. Well, I was approached by the FBI in 1943, but—
Q. When did you join the Communist Party?
A. When I was registered as a member of the Communist Party it was in 1944.
Q. Yes, and I think you testified that there came a time when the FBI began to pay you for your services, is that right?
A. Yes.
Q. And when did they start paying you?
A. That is something I can't tell you.
Q. You don't remember?
A. No, because weeks passed—I would not accept the pay for a certain period of time.
Q. I know, but the time came when you did accept pay?
A. Yes.
Q. And when did that time come? When was it?
843 A. I believe it was in the latter part of '44 or '45.
Q. The latter part of '44 or '45?
A. Yes, up to—from the—

Q. Just a moment, Mr. Witness. I will ask the questions.

A. Yes.

Q. Can you fix the time any more exactly than that?

A. No, I wouldn't.

Q. You wouldn't know?

A. I wouldn't.

Q. So you don't remember any closer than that when you first began to be paid by the FBI?

A. I have been receiving expense money.

Q. I understand that.

A. Right from the beginning.

Q. Right from the beginning?

A. Yes.

Q. But then in addition to expense money, they started to pay you?

A. No, I just got expense money until about later in '44, the latter part.

Q. The latter part of '44 or '45, is that what you said?

844 A. '44 or the early part of '45.

Q. And how much did they pay you when they first started to pay you, $5? Is that correct?

A. Correct.

Q. And how long did you keep on getting $5 a week? When did you get your first raise?

A. Well, I would have to check. I can't tell you because I might tell you different than it happened, and so I wouldn't.

Q. You don't remember when you got your first raise?

A. No.

Q. How much of a raise did you get when you got it? Did you get $5 a week? Were you raised to $10 a week?

A. Maybe less.

Q. Maybe more, maybe less?

A. Maybe $10, maybe $5; I don't know because I wasn't paying any attention to the pay. I wasn't doing this for pay.

Q. You weren't paying any attention to it? You got your first raise but you don't know when it was?

A. No.

Q. And you got a second raise?

845 A. Yes.

Q. When was that?

A. I believe it was in '47 or '48.
Q. '47 or '48.
Now after you got your second raise, how much were you making?
A. Ten or fifteen dollars a week, I believe.
Q. Ten or fifteen dollars a week?
A. Yes.
Q. How long did you keep on getting ten or fifteen dollars a week?
A. Well, I don't see why I should make any guesswork unless I get the records.
The Court: Your best judgment.
Mr. Abt: If you can't remember, just say so.

By the Witness:
A. I don't remember.

By Mr. Abt:
Q. You don't remember.
Do you remember how much you were increased to after you got the next raise?
A. May I say this, that—
Q. Just a moment, Mr. Witness—
846 The Court: Answer the question.
Mr. Abt: Listen to the question.
The Court: Listen to the question.
How much were you increased to after you got the next raise?
847 The Witness: About $5.
The Court: Well, that means what?
The Witness: No, wait, $5 a week.

By Mr. Abt:
Q. That is up to what, then? What were you getting then?
A. I believe $25.
Q. $25? That is the first—
A. $20 or $25.
Q. Well, Mr. Witness, you told us that you were getting $10 or $15 a week.
A. Correct.
Q. Then you got a raise?
A. $5.
Q. A $5 raise, is that right?
A. Correct.

Q. So you either at that time would be getting $15 or $20 a week, isn't that correct?

A. Correct.

Q. Then you got another raise, am I right, after you were getting $15 or $20 a week?

A. Yes.

Q. After a time you got another raise?

A. Yes.

848 Q. And how much was that raise?

A. For the last—

The Court: How much was it, he asked you.

The Witness: That was what year, now?

Mr. Abt: I am going to ask you that next. I don't know. I am asking you.

The Witness: Well, I don't know either.

By Mr. Abt:

Q. You don't remember when you got your next raise?

A. No.

Q. Do you remember how much that raise was?

A. I don't know. For the last two or three years, I was receiving $40 a week.

Q. For the last two or three years you were receiving $40 a week?

A. Correct. Maybe it was four years.

Q. For the last four years?

A. Maybe four years.

Q. Are you sure of that?

A. No, I am not.

Q. So you don't know how long you have been getting $40?

A. I don't know how long.

849 Q. But each year you reported what you were getting in your income tax?

A. Absolutely.

Q. But you don't know for how many years you have been reporting you were getting $40 a week from the F. B. I.?

A. No, sir.

Q. All right.

Now I think you testified, Mr. Witness, that after you went to work for the F. B. I. you reported on every meeting that you attended, is that correct?

A. Correct.

Mr. O'Donnell: I object, your Honor. I don't think he said he went to work for the F. B. I.

Mr. Abt: I don't know what you would call it, Mr. O'Donnell.

Mr. O'Donnell: Ask him the question.

The Court: The answer may stand.

By Mr. Abt:

Q. You reported on every meeting you attended?

A. Correct.

Mr. O'Donnell: I object to that, your Honor, and
850 ask it be stricken unless we qualify that as meaning Communist Party meetings or not. That is a very broad question.

The Court: I assume that is what he is referring to.

Mr. Abt: Let me bring it out, your Honor. That is what I was referring to, of course.

By Mr. Abt:

Q. You reported on all Communist Party meetings that you attended?

A. Correct.

Q. Did you report on any other kind of meetings you attended?

A. No, sir.

Q. When you reported on Communist Party meetings, you reported the names of the people that were present?

A. Yes, sir.

Q. And you reported what each person said at the meeting, did you not?

A. Well, if it was of interest for the security of the nation, I did.

Mr. Abt: I move that be stricken.

The Court: Strike it out.

851 Listen to the question.

By Mr. Abt:

Q. Did you report what was said at the meeting?

A. Yes, sir.

Q. Each one of these meetings you attended?

A. Yes, sir.

Q. Now did you make any friends while you were in the Communist Party?

A. Yes, sir.

Q. When your friends attended a Communist Party meeting, you reported their names to the F. B. I., right?

A. Yes, sir.

Q. At some of these meetings your shopmates attended in this U. A. W. club, right? When you were in the U. A. W. club?

A. Yes, sir.

Q. The other members of that club were your shopmates at this Electromotive shop, is that right?

A. Yes, sir. Well, they were Communists, not shop mates, Communists.

Q. They were your shop mates, they worked beside you in the shop, is that right?

A. Yes, sir.

852 Q. And you reported their names to the F. B. I.?

A. Yes, sir.

853 Q. Now on the average, how many meetings did you attend a week, Communist meetings of one kind or another, over this whole period from 1944 to now?

A. It is quite an area, isn't it?

Q. Quite a what?

A. Quite an area to tell you how many meetings I attended.

Q. Can you give us any idea? Did you attend one a week, on the average?

A. Once or twice a week, sometimes three times.

Q. Sometimes as many as three times a week?

A. Yes, sir, sometimes two meetings in a day.

Q. Sometimes two meetings in a day?

A. Correct.

Q. So that sometimes it was even more than three meetings a week?

A. Yes, sir.

Q. And you have been doing that now for ten years, is that right?

A. Eleven years.

Q. Eleven years.

Anywhere from one, two, three, four or maybe even more meetings a week, is that right?

A. Yes, sir. Sometimes I skipped a couple of

854 weeks.

Q. Skipped a couple of weeks?

You reported on all these meetings to the FBI?

A. Yes, sir.

Q. Now you said that you were the literature director of one of your clubs, at one time, is that right?

A. Yes, sir.

Q. When was that?

A. I believe that was in 1947; I am not sure.

Q. 1947?

A. I believe so.

Q. And you said that when you were literature director, your job was to get literature and bring it to the club for the members of the club, is that right?

A. Correct.

Q. And you got that literature at a book store, I think you said?

A. Yes, sir.

Q. What was the name of that book store?

A. The Modern Book Store.

Q. Where is it located?

855 A. 64 West Randolph Street.

Q. 64 West Randolph Street, right here in the Loop?

A. Correct, yes, sir.

Q. You used to go to that store and pick up the literature to bring to the club, is that right?

A. Correct.

Q. And that store sold, did it not, these various books by Marx and Stalin and Lenin?

A. Correct.

Q. It sold "Foundations of Leninism," for example?

A. Yes, sir.

Q. It sold the "History of the Communist Party of the Soviet Union"?

A. That is right.

Q. And those books were right out on the shelf so anyone could come right in and buy them, could they not?

A. Yes, sir.

Mr. Abt: I see your Honor is ready to suspend?

The Court: The jury will remember your instructions.

856 Mr. Marshall, we will adjourn now until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken in the above-entitled case until Wednesday, January 19, 1954, at ten o'clock a. m.)

857 Before Hon. Philip J. Sullivan, Judge, and a Jury.

Wednesday, January 19, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Appearances:

Hon. Herbert Brownell, Jr., United States Attorney General, Hon. Robert Tieken, United States Attorney, by: James B. Parsons, Esq., Assistant United States Attorney, and William F. O'Donnell III, Esq., Special Assistant to the Attorney General, on behalf of the Government;

John J. Abt, Esq., George W. Crockett, Esq., and Joseph E. Clayton, Jr., Esq., on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

858 And thereupon the following further proceedings were had herein:

Mr. Parsons: I would like to inform the Court, your Honor, that I did inform counsel this morning that it will be the purpose of the Government as soon as possible to move to the close of this case.

The Court: What?

Mr. Parsons: I have informed the other counsel, for the defendant, that it will be the purpose of the Government as soon as possible to move to the close of this case, today.

The Court: All right, proceed.

ANZELM A. CZARNOWSKI, a witness on behalf of the Government, having been previously duly sworn, resumed the stand and testified further as follows:

Cross-Examination (Cont'd) by Mr. Abt.

Q. Mr. Witness, before we proceed the court reporter has told Mr. Parsons and me that she is not sure how you spell your last name. Will you give that spelling again, please?

A. C-z-a-r-n-o-w-s-k-i. The first name is A-n-z-e-l-m.
859 and "A" is the middle initial, for "August".

Q. Now, you testified yesterday, I believe, that you didn't use your right name when you were in the Party?

A. Correct.

Q. You used the name of Czarnum, I believe?

A. Correct.

Q. As a matter of fact, didn't all of your associates in the Communist Party know your right name?

A. Not all of them.

Q. Didn't members of your club meet at your house?

A. I don't know how many knew my right name.

Q. Just listen to my question. Listen to the question, Mr. Witness.

A. Members of my club knew my name, yes.

The Court: Yes.

By Mr. Abt:

Q. When they met at your house they met at the house of Czarnowski?

A. Yes.

Q. As a matter of fact, they called you "Czar"?

A. Correct.

Q. And in your shop you were known as "Czar"?

A. Yes.

860 Q. The members of your club in the shop knew you were Czarnowski, is that correct?

A. Correct.

Q. So the only thing that really happened is that your card showed the other name?

A. I was registered in the Communist Party as Steve Czarnum.

Q. But everybody knew you as Czar?

A. Not everybody.

Q. When we adjourned yesterday I was asking you about your work when you were the literature agent of your club.

A. Yes.

Q. When was that, again?

A. I believe that was in 1947 or 1948.

Q. 1947 or 1948?

A. Yes. I am not sure of the date.

861 By Mr. Abt:

Q. Are you sure it was either 1947 or 1948?

A. I knew I was literature director. I will not say the year. I am not sure.
Q. Could it have been 1949?
A. Maybe.
Q. Could it have been 1950?
A. Not 1950.
Q. Could it have been 1946?
A. 1946, I don't know.
Q. It could have been?
A. It could have been.
Q. It could have been anywhere from 1946 to 1949?
A. Yes, sir.
Q. But you are very sure it was not after 1949?
A. Well, I supplied—
Q. Just answer my question, Mr. Witness.
The Court: Are you sure it was not after 1949?
The Witness: After 1949 I supplied my present—

By Mr. Abt:

Q. Were you the literature director after 1949?
A. Yes, but—
862 Q. You were or were not? I don't understand your answer.
A. No, I was not literature director.
Q. You were not literature director after 1949?
A. No.
Q. You are sure of that?
A. No, I am not sure of that. I am not sure of any date.
Q. You are not sure of any date?
A. I mean dates as far as you are asking.
Q. Was it as late as 1951?
A. No.
Q. You are sure of that?
A. Yes.
Q. Now, as I understand you, Mr. Witness, you said when you were literature agent you went to the Modern Book Store to buy literature for your club?
A. Yes.
Q. Where was this Modern Book Store located while you were literature agent?
A. 64 West Randolph Street.
Q. What floor was that?
A. Ninth floor.

Q. Now, Mr. Witness, you will be asked, and I
863 want you to think carefully and to tell me if it is not a fact that the Modern Book Store was not located at 64 West Randolph Street in 1946, 1947, '48, '49 or 1950? Is it not a fact that the Modern Book Store was not located at that address in any of those years?

A. I don't know.

Q. You don't know? Let me refresh your recollection. Isn't it a fact that the Modern Book Store at one time had a store on the street floor at 163 North Michigan Avenue?

A. Oh, yes. I remember now, since you corrected me.

Q. When was the store located there, if you remember?

A. I don't know.

Q. Isn't it a fact that after it moved from 163 North Michigan, that then it next had its store at 180 West Washington Street? Do you remember that?

A. No.

864 By Mr. Abt:

Q. Don't you remember it had a store at 180 West Washington Street, down in the basement?

A. Yes, yes.

Q. When was the store at 180 West Washington Street?

A. In '49, I believe.

Q. In 1949?

A. Yes.

Q. So you couldn't have gone to 64 West Randolph Street in 1949?

A. No. I can explain that, too.

Q. I am not asking you to explain it, Mr. Witness. I am asking you to tell us when you were the literature agent for your club, if you were, in 1949.

A. I was.

Q. Then you couldn't have gone to the Modern Book Store on Randolph, at 64 West Randolph?

A. Correct.

Q. But you couldn't have gone to that store on the 9th floor there?

A. No.

Q. But went in the basement store at 180 West Washington?

A. That's right.

865 Q. Isn't it true the Modern Book Store didn't move until 1951 to that place, 64 Randolph?

A. I don't know when they moved.

Q. But you do say they were at 64 West Randolph Street in 1949?

A. Correct.

Q. Now, wherever that book store was, it was open to the public, wasn't it?

A. Yes.

Q. At all the addresses?

A. Yes.

Q. And all the books by Marx, Engels, Lenin and Stalin were on display on the bookshelves of that store?

A. Yes.

Q. Anybody who went in the store could see them and buy them?

A. Yes.

Q. And "Political Affairs" was on sale in that store?

A. Yes.

Q. And "The Daily Worker", too?

A. Correct.

Q. When was the last time you were in that book 866 store?

A. A week or two ago.

Q. All these were open to the public?

A. Yes.

Q. At that time?

A. Yes.

Q. Now, who, could anybody who came in there look at those bookshelves in that store and at the books and buy whatever he wanted to, isn't that right?

A. Yes.

Q. Mr. Witness, when did you stop working at the Electromotive plant?

A. I believe it was 1950.

Q. I didn't get that.

A. I believe it was 1950.

Q. You believe it was 1950?

A. Yes.

Q. Are you sure of that?

A. As far as I am concerned that was not very important.

Q. It was not?

A. No, it was not so important. I was glad to get out of there.

Q. You were glad to get out of there?

867 A. Yes.
Q. So it was important for you to get out?
A. Yes.
Q. Then it was important?
A. No, it was not important.
Mr. Parsons: I object as argumentative.
The Court: The answer may stand.

868 By Mr. Abt:
Q. You are not sure it was 1950?
A. No, I am not sure.
Q. Could it have been 1949?
A. No, it was 1950 or later. I believe it was October 1950.
Q. What was the occasion for your leaving that plant? Were you laid off?
A. No, sir.
Q. Did you quit voluntarily?
A. I quit voluntarily, yes, sir.
Q. You quit voluntarily?
A. Yes.
Q. At that time you became a sign painter?
A. I was a sign painter all my life.
Q. You have been a sign painter all your life?
A. Yes.
Q. But when you quit you went back to painting signs?
A. Yes.
Q. You opened up a business for yourself?
A. Yes.
Q. To paint signs?
A. Correct.
Q. You have worked as a sign painter ever since?
869 A. Yes.
Q. What was your job at the Electromotive?
A. As a sign painter.
Q. You worked as a sign painter at the Electromotive?
A. Yes.
Q. How much were you making then?
A. Around $80 a week if I put in a week.
Q. Did you usually put in a whole week?
A. No, sir.
Q. What was your usual take-home pay?
A. There were certain important matters come up.
Q. Now, I am not asking you for an explanation, Mr. Witness. What was it on the average, what did you make?

A. I earned $2.18 an hour.
Q. How many hours did you put in on an average?
A. I can check and bring you the exact record tomorrow.
Q. I don't want you to.
The Court: How much did you make a week, your best recollection?
The Witness: About $60.

By Mr. Abt:

Q. You made about $60?
870 A. Yes.
Q. Then when you went in sign painting for yourself. At the beginning, after you quit the Electromotive job and started sign painting for yourself, how much were you making then?
A. $5 up, $10 a week. I was too busy doing sign painting. I have rejected a lot of work on account of the work here that I had to do.
Q. So in the beginning you were making what?
A. Five, ten, twenty dollars, sometimes I made more, sometimes less.
Q. Sometimes you made more and sometimes less?
A. Yes.
Q. Isn't it a fact that you got this raise at the FBI to $40 a week at that time?
Mr. Parsons: I object to the characterization of "raise".
Mr. Abt: The witness testified to that.
Mr. Parsons: He testified it was an increase.
Mr. Abt: In my opinion "raise" and "increase" are the same.
The Court: He may answer.

871 By Mr. Abt:

Q. Isn't it a fact that you got this raise, or if you want to use words such as "increase" in pay from the F. B. I. up to $40 a week at the time you left Electromotive?
A. Yes.
Q. Now, how much are you making as a sign painter now?
A. Well, I will tell you the exact amount I made last week.
Q. All right.
A. Nothing.
Q. Nothing?
A. Yes.

Q. And the week before that?
A. $8.50.
Q. And the week before that?
A. Shall I bring you the records?
Q. No, no.
A. That is all I can tell you.
Q. That is about all you have been doing in the sign painting business, is that right?
A. About four weeks ago I made $59.
Q. That was a pretty good week, then; right?
872 A. Yes, sir.
Q. Each week you have been getting $40 a week from the F. B. I.?
A. Yes, sir.
Q. Have you had any discussion with the F. B. I. about your pay after you finish testifying here today?
A. No, sir.
Mr. Parsons: I object. I object to this line of questioning.
The Court: The answer may stand.
Mr. Parsons: It seems to me it is not in point here and is not leading to any impeachment of the witness.
The Court: The witness may answer. I mean, the answer may stand.
Mr. Abt: It is continuing the line, I have finished that and the witness has answered.

By Mr. Abt:
Q. Just one question. When did you get your last $40 from the F. B. I.?
A. Do you want the date, the exact date?
Q. If you can give it to me.
A. I can't give it to you.
The Court: Your best estimate.
873 The Witness: It was three weeks or four weeks ago.

By Mr. Abt:
Q. So they still owe you for four weeks?
A. Maybe they do, maybe they don't. If they give it to me, all right, but I expect more than that.
Q. You expect more than that?
A. Yes, I expect the security of this country.
Mr. Abt: I move the last answer be stricken.
The Court: Strike it out.

By Mr. Abt:

Q. You testified, Mr. Witness, that you came here from Germany in 1913.

A. Yes, 1913.

Q. That was right before the break of the World War I?

A. Just before the outbreak.

Q. Did you ever go back to Germany?

A. I went back to Poland.

Q. You went back to your home?

The Court: To Poland.

The Witness: To Poland, yes.

By Mr. Abt:

Q. You went back to the town where you were born?

A. Yes.

874 By Mr. Abt:

Q. After World War I that became a Polish town rather than a German town?

A. Correct.

Q. When did you go back?

A. That was 1920 or '21.

Q. You left Germany immediately after—I am sorry,—immediately before the outbreak of World War I?

A. Yes.

Q. And you left to get away from the German draft?

A. Correct.

Q. You say you were asked to attend or you were assigned to the Argo club in 1944 and you remained there until 1947?

A. Yes, correct.

Q. Then you were assigned to the United Automobile Workers club?

A. Correct.

Q. How long did you remain there?

A. Until 1950.

Q. Are you sure of that date?

A. No, I am not sure.

Q. You are really not sure of any date, are you?

875 Mr. Parsons: I object to this, your Honor.

The Court: Sustained.

By the Witness:

A. It might have been 1951, by the time, it could have been that by the time I got the transfer, it could have been 1951.

By Mr. Abt:

Q. Could it have been 1949?

A. No.

Q. Then you were transferred back to the Argo club?

A. Yes, sir.

Q. And you have remained there ever since?

A. Yes, sir.

Q. Now, in 1951, 1952 and in the early part of 1953, Mr. Witness, isn't it a fact that one of the main activities of the Argo club was to participate in a campaign urging a "cease fire" in Korea?

A. Yes.

Q. And the members of the club distributed leaflets calling for "cease fire" in Korea?

A. Yes, sir.

Q. As a matter of fact, you yourself participated in that campaign?

A. Yes, sir.

876 Q. Isn't it true, that you yourself had a son in Korea?

A. Had what?

Q. Had a son in Korea?

A. Yes.

Q. Fighting in Korea?

A. Yes, sir.

Q. Didn't you yourself take the floor on the question of Korea at a meeting of the U. A. W. meeting?

A. At the instigation of the Communist Party.

Mr. Abt: I move to strike that.

The Court: Strike it out.

Did you take the floor?

The Witness: Yes, sir.

By Mr. Abt:

Q. When you took the floor, didn't you read a letter you had gotten from your son?

A. No, sir.

Q. But you did when you took the floor at that meeting make a plea for a "cease fire"?

A. Yes, sir.

Q. And you told the men at that meeting how you had a son in Korea?

A. Yes, sir.

877 Q. And how you wanted a "cease fire" in Korea?

A. Yes, sir.

Q. During the first years you were a member of the Argo club, in 1946 or 1948, Mr. Witness, do you recall there was a strike in the packing plants here in Chicago?

A. Yes, sir.

Q. That strike was called by the United Packinghouse Workers, was it not?

A. Yes.

Q. That is a C. I. O. union?

A. Yes.

Q. Isn't it a fact that one of the activities of the Argo club at that time was to give support to the Packinghouse strike?

A. Yes, sir.

878 Q. You collected clothing for them?

A. Yes, sir.

Q. And sent it to the union hall?

A. Yes.

Q. And you collected money?

A. Yes, sir.

Q. And you gave the money over to the Union?

A. Yes.

Q. To help support the strikers?

A. Yes.

Q. Calling your attention to 1951, wasn't it one of the activities of the Argo Club to conduct a campaign urging Congress to reduce taxes?

Mr. Parsons: I object to this. We are getting pretty far afield.

The Court: He may answer.

The Witness: I don't remember anything about taxes.

By Mr. Abt:

Q. It could have been?

A. It could have been. I can't recall it.

Q. Don't you remember a leaflet the Argo Club distributed, calling on the Congress to reduce taxes?

A. I do not remember.

879 Q. Now, calling your attention to 1950 and 1951, isn't it a fact that one of the activities of the Argo Club in those years was to support a campaign for eliminating segregation in the grammar school in Argo?

A. Yes, sir.

Q. That campaign was initiated, wasn't it, by the PTA in that school?

Mr. Parsons: I object, and I would like to be heard on the objection.

The Court: The reason, Mr. Parsons, I am permitting it, is that on your examination of your witness, this witness, you asked about that club.

Now he has the right, when you have opened that up, to prove, if he can, or to inquire about it, anything, whatever else was said.

Mr. Abt: I am not going to be very long about that.

May we have the question read by the Reporter?

(Question read by the Reporter.)

By Mr. Abt:

Q. That was the Parent-Teachers Association?

880 A. It was instigated by the Communists of the community.

Q. It was also taken up by the Parent-Teachers Association?

A. It was under the control of the Communist Party at that time.

Mr. Abt: I move to strike that.

The Court: Strike it out.

By Mr. Abt:

Q. Wasn't that campaign also associated with the National Association for the Advancement of Colored People?

Mr. Parsons: I object, your Honor. That would not necessarily be within the witness' knowledge.

The Court: If you know.

Mr. Abt: If you know, yes.

The Witness: I don't know.

By Mr. Abt:

Q. You don't know?

A. I heard of it.

Q. You heard of it?

A. Yes.

881 Q. Now, Mr. Witness, you were a member of the Communist Club at Electro-Motive. From what time—what were those dates again—1947 until around 1950, is that right?

A. Yes.

Q. Wasn't one of the principal activities of the Communist Club at Electro-Motive the publication of a paper?

A. Yes, sir.

Q. That paper was called "The Diesel Worker" was it not?

A. Correct.

Q. Do you remember in what year the first issue of that paper was published?

A. I believe it was in 1947.

Q. If I told you it was 1948, would you accept that as the date?

A. Yes.

Q. And it was published from 1948 right along until you left that Club, was it not?

A. It came out—

Q. About once a month?

A. I mean, it came out once a month, sometimes they left it out. I think—I mean, they couldn't get it out.

882 Q. But more or less once a month?

A. Yes.

Q. The paper itself stated it was published by the Communist Party members, working at Electro-Motive, did it not?

A. Yes, sir.

Q. And it stated that the paper was issued by the Communists working at Electro-Motive, in the interests of the diesel workers, did it not?

A. That is what they said, yes.

Q. That is what they said, that is all I am asking you.

A. Yes.

Q. So that anybody who read the paper would know it was published and issued by the Communists working in Electro-Motive, is that right?

A. Yes, sir.

Q. Now that paper discussed various shop problems at Electro-Motive that workers had in the shop, didn't it?

A. Yes, sir.

Q. And it made suggestions to the workers as to how those problems could best be solved, didn't it?

A. Yes, sir.

883 Q. For example, this paper took up the question of the speed-up, did it not?

A. Yes, sir.

Q. And the speed-up was a matter of great concern to the workers in the diesel, when you were there, was it not?

A. Yes, sir.

The Court: Is that "speed-up"?

Mr. Abt: Speed-up, that is right.

By Mr. Abt:

Q. And what does "speed-up" mean?

A. "Speed-up" is to speed up production by the company.

Q. Make the—

A Making the workers speed up, I mean, produce more than they have done before.

Q. To make them work harder and faster, is that right?

A. Yes, sir.

Q. And this paper took up the problem of speed-up and gave suggestions, did it not, to the workers as to how to handle that problem, is that right?

A. Yes, sir.

Q. And it took up the question of wages, too, didn't it?

884 A. Yes, sir.

Q. And various provisions of the collective bargaining contract?

A. Yes, sir.

Q. What kind of suggestions did it make concerning how to solve the problem of speed-up?

A. I can't answer that, I couldn't tell you that.

Q. Didn't it urge that the union negotiate with management on this question?

A. They did, yes, sir.

Q. And that the union ask management to put a limit on the amount of work and the speed-up of the work that a worker would have to put in?

A. Yes, sir.

Mr. O'Donnell: I am going to object to this line of questioning.

The Court: Did your paper have something to do with the Communist Party?

Mr. Abt: Yes, this paper was put up, the witness was just testifying, put out by the Communists.

Mr. O'Donnell: No objection to that part of it at all, your Honor.

My one objection is that we are getting pretty far 885 afield from the issues now on speed-up, what is a speed-up, and so forth, and so on.

There are many people who have many ideas on what a speed-up is, or what is peace in Korea.

Now I don't think that any person would publicly for the

most part uphold income tax, speed-ups, war in Korea and things like that.

I think the issues themselves are pretty broad.

The Court: You are not going to pursue this more in detail?

Mr. Abt: I am not going to pursue the speed-up. I asked the witness because you asked what "speed-up" meant, or indicated to me you were not quite sure, and I assumed some members of the jury weren't quite sure, either.

By Mr. Abt:

Q. In this club at Electro-Motive, Mr. Witness, and the paper it put out, that also took up the question of upgrading Negro workers, did it not?

A. Yes, sir.

886 Q. And by upgrading Negro workers, that meant securing their promotion to higher skilled jobs, did it not?

A. Yes, it meant to give them equal opportunities with other workers.

Q. And as a matter of fact, weren't some advances made in that plant in upgrading Negro workers?

A. Yes, sir.

Q. The United Automobile Workers in that plant, the union, that is, had a Fair Employment Practices Committee, did it not?

A. Yes, sir.

Q. And didn't the paper urge the strengthening and the improvement in the work of that committee?

A. Yes, sir.

Q. While you were a member of that Electro-Motive unit, Mr. Witness, didn't you yourself circulate and get signatures to a petition to ban the use of the atom bomb by anybody—any country?

A. Yes, sir.

Q. You yourself circulated that petition in the shop, didn't you?

Did you circulate the petition in the shop?

A. Yes, I did, yes.

887 Q. And you got signatures to that petition from people in the shop, is that right?

A. No, I wouldn't say that, because you know in the shop you couldn't get any signatures.

Q. Outside of the shop you did?

A. That is right, yes.

Q. Now did you give the names of all of the people who signed that petition to the FBI?

A. I turned the list in to the man in charge of the club.

Q. I am talking about something else.

Did you give those names of the people who signed the petition—

A. On that petition?

Q. Just listen to me, Mr. Witness.

A. Yes, sir.

Q. Did you give the names of the people who signed the petition, that you got to sign the petition, did you give those names to the FBI?

A. No.

Mr. Parsons: Your Honor, I object.

If counsel would want to rephrase his question, I believe it rests on an inaccuracy of fact. The petition was one
888 not signed wholly by members of the Communist Party. The assumption wouldn't be correct.

Mr. Abt: The witness answered no.

The Court: He asked as to those who signed, did he turn it over, and he said what?

Mr. Abt: The argument is over nothing, he has answered, the witness answered no.

Mr. O'Donnell: I think Mr. Abt. interrupted Mr. Parsons at that time. He has a right to be heard.

The Witness: May I explain it for certain?

The Court: Did you answer the question?

The Witness: I did.

Mr. Abt: I am satisfied, your Honor.

By Mr. Abt:

Q. Now Mr. Witness, in one of the articles from the Party Forum that Mr. O'Donnell read to the ladies and gentlemen of the jury yesterday, while you were on the stand, reference was made to the term "White Chauvinism".

A. Yes, sir.

Q. What do Communists mean by that term?

A. "White Chauvinism" is what the White race is opposed to any other race.

889 Q. Wouldn't you say it also means in a general sense that it means White supremacy?

A. Yes, sir.

Q. The feeling on the part of some White people that other races are inferior to them, is that right?

A. Yes, sir.

Q. Now all of the time that you were in the Communist Party, the Communist Party very vigorously opposed White supremacy, didn't it?

A. Yes, sir.

Q. Now Mr. Witness, you testified in 1949 you attended a school?

A. Yes, sir.

Q. That school was located on the 4900 block of South Park Avenue.

A. Yes, sir.

Q. What kind of a building was that in?

A. It was a club house.

Q. Do you know what club?

A. C.N.D.A., whatever it is.

Q. Wasn't it a club house of the Federated Women's Club?

A. Maybe it is, I don't know who has it.

Q. Would you accept that as fact, that it was a club house?

890 A. Yes.

Mr. O'Donnell: Object, he doesn't have to accept that as a fact. He said he didn't know.

The Court: The answer may stand.

By Mr. Abt:

Q. What was the name of the school you attended there?

A. The Workers' School.

Q. The Workers' School?

A. That is right.

891 Q. And the Workers' School met in one or a number of rooms of that club house?

A. That is right, yes, sir.

Q. The other rooms in the club house were used for some other purpose?

A. I don't know what the other rooms were used for.

Q. It was in that school, that Workers' School, that you used to study, used the study outline that you identified yesterday, is that right?

A. Yes, sir.

Q. Now that school was open to anyone who wanted to attend it, was it not?

A. I wouldn't say that.
Q. You wouldn't say that.
A. No, sir.
Q. Isn't it a fact that anyone who came there and paid a fee, whatever the fee was for taking the course, could take the course?
A. Not according to my experience.
Q. Not in your experience?
A. No, sir.
Q. Isn't it a fact that that school was open to both Communists and non-Communists?
A. I don't believe so.
892 Q. You don't believe so.
Well, let me call your attention, Mr. Witness, to Government Exhibit 74, a little booklet entitled "Chicago Workers' School, Spring Term, April 4 to May 28."
This is the booklet that you identified yesterday, isn't it?
A. Yes, sir.
Q. Now I call your attention, Mr. Witness—
Mr. O'Donnell: Just a minute, Mr. Abt.
May I see that exhibit?
Mr. Abt: This is your photostat that you supplied to us. If you want to give me the original, it is all right with me.
Mr. O'Donnell: I just wanted to look at it.
Mr. Abt: Do you want me to work with the original? Is this the one that we identified?
Mr. O'Donnell: I just want to check it.
Mr. Abt: There is confusion about the exhibits, your Honor.
I don't know whether the photostat they gave me is actually a photostat of the same document they
893 offered.
The Court: You may inquire.
Mr. Abt: It is not a question of inquiry. It is just a question of trying to straighten out here what exhibits we are working with.

By Mr. Abt:

Q. Now we have the original, Mr. Witness.
This is the exhibit that you identified yesterday when Mr. O'Donnell showed it to you, isn't it?
A. Yes, sir.

Q. I want to call your attention to the inside of the front cover, Mr. Witness, the last paragraph on the inside of the front cover, and ask you whether or not that, refreshes your recollection as to whether the Workers' School is or was open to anyone who wanted to come there, and take a course?

Just the last paragraph, doesn't that refresh your recollection?

A. Yes, sir.

Q. And what is your recollection now?

A. That they accept no one but Communist members, and those that qualify to attend that school.

Q. And those who qualified to attend the school?

894 A. Yes, sir.

Mr. Abt: Now if your Honor please, I would like to read a portion of this exhibit to the jury.

Ladies and gentlemen of the jury:

I want to read to you from the inside cover of this exhibit, just one short paragraph or two paragraphs.

The first paragraph on the inside of the front cover says:

"The Chicago Workers' School is dedicated to study and discussion of the science of Socialism."

And then the last paragraph:

"The school is open to all persons regardless of race, creed or color and has no requirements for admission other than a sense of justice and a willingness to fight for the rights of the common people of this country and any country."

Mr. O'Donnell: Mr. Abt, I might ask you is that the paragraph that you used to refresh his recollection as to whether or not non-Communist members attended

895 that school?

Mr. Abt: Yes, that is the paragraph.

Mr. O'Donnell: Thank you.

Mr. Abt: If I may, your Honor, may I exhibit the exhibit to the jury?

The Court: You may.

Mr. Abt: May we have just a moment, your Honor?

By Mr. Abt:

Q. Now, Mr. Witness. I think you testified that the first time you met Mr. Lightfoot was in 1945?

A. Yes, sir.

Q. At a meeting?

A. Yes, sir.
Q. What was the date of that meeting?
A. March 30, 1945.
Q. March?
A. I mean November 30, 1945.
Q. November 30, 1945, you remember that date very well?
A. Yes, sir.
Q. You are quite sure of that?
A. I am pretty sure of it.
Q. It was just that date, November 30, 1945?
896 A. Yes, yes, sir.
Q. Where was that meeting?
A. At the Ashland Auditorium.
Q. How many people were there?
A. I don't know, about 30, 40, I don't know.
Q. Now, to refresh your recollection, Mr. Witness, wasn't there about 300 or 400 people there?
A. I wouldn't swear to it.
897 Q. You wouldn't swear to it, but you wouldn't swear that there were not three or four hundred people there?
A. No, sir.
Q. All right. Were you introduced to Mr. Lightfoot at that meeting?
A. No, sir.
Q. You just saw him there?
A. Yes, sir.
Q. He was on the platform?
A. Yes, he was near the platform, yes, sir.
Q. He was near the platform or he was on it?
A. Well, let's say he was on it.
Q. You think he was on it?
A. Yes. I don't think he was on the platform, he was near the platform, because when William Patterson introduced him, he was in the front of the meeting.
Q. Patterson introduced him to the meeting, is that right?
A. To the meeting, yes.
Q. What did Mr. Patterson say in introducing him to the meeting?
A. I don't know.
Q. You don't know?
898 A. I can't recall, no.
Q. You can't recall anything that he said?

A. Yes.

Q. You can't recall anything that Mr. Patterson said?

A. Yes, I can recall some of the things that he said.

Q. You can't recall what Mr. Patterson said when he introduced Mr. Lightfoot to the meeting, is that right?

A. That is right.

Q. Now you testified, at that meeting Mr. Lightfoot was in uniform?

A. Yes, sir.

Q. A uniform with the rank of Technical Sergeant, I believe?

A. Yes, sir.

Q. Or Staff Sergeant, I'm sorry.

A. Staff Sergeant.

Q. To your knowledge, had he been discharged from the Army at that time?

A. I can't tell you that, I don't know.

Q. As a matter of fact, Mr. Witness, don't you recall that when Mr. Patterson introduced him, he welcomed
899 Mr. Lightfoot back into civilian life?

A. Yes, that is true, yes, sir.

Q. He did, right?

A. Yes, sir.

Q. Now do you remember what Mr. Patterson said?

A. Yes, sir.

Q. He congratulated him on his honorable discharge from the army?

A. He did, yes, sir.

Q. Now you reported that meeting to the FBI?

A. Yes, sir.

Q. You reported that Mr. Lightfoot attended the meeting?

A. He was present, yes, sir.

Q. You reported to the FBI that he was present?

A. Yes, sir.

Q. Did you put that in your report?

A. Yes.

Q. As a matter of fact, didn't you say in your own report that Mr. Lightfoot has just been discharged from the Army?

A. Yes, I believe I did. I am not—

Q. I am asking you now, Mr. Witness, whether you put in your report to the FBI of this meeting a state-
900 ment that Mr. Lightfoot had been discharged from the Army?

A. I don't recall that.

Q. You don't recall whether you put this in your report or not?

A. No, sir.

In fact, I don't believe that I knew whether he was—

Q. Mr. Witness, didn't you just finish telling us you now remember that Mr. Patterson, in introducing Mr. Lightfoot, said that he had just been discharged from the Army?

A. Well, you put that in my mouth, you said that.

The Court: I don't want any of that any more. The spectators will leave the room if there is any more of that.

By Mr. Abt:

Q. Now, Mr. Witness, I am not sure what your testimony is.

Mr. Parsons: I object, your Honor, those remarks are not a question to the witness.

The Court: You may state the question.

By Mr. Abt:

Q. Do you recall now, or don't you, that when Mr. Patterson introduced Mr. Lightfoot to the meeting, he said that Mr. Lightfoot had just been discharged from the Army and that he, Mr. Patterson, welcomed Mr. Lightfoot back into civilian life, do you remember that happening, or don't you?

901

A. I don't.

Q. You don't.

Do you remember, then let me ask you one other question, do you remember anything that Mr. Patterson said when he introduced Mr. Lightfoot?

A. He welcomed the veterans home from their service.

You asked me what Patterson said, what he said about Claude Lightfoot, I don't know, I do not remember. If you wish to know—

The Court: You have answered.

By Mr. Abt:

Q. Just a moment, that is enough, that is all I want to know.

But you do remember just what Gil Green said in his speech, don't you?

A. Yes, sir.

Q. All right. Now if your Honor please, I would like

to call the attention of the jury to the question of
902 Government's Exhibit 16, which is Mr. Lightfoot's Selective Service Record, which is in evidence here, simply to indicate the date on which he was discharged from the Army.

Mr. Parsons: If it please the Court, I believe Counsel has not laid a proper foundation for that.

The Court: He may read it, if that is your purpose, when he was discharged from the Army.

Mr. Abt: Ladies and gentlemen of the jury, I want to call your attention to an Exhibit that Mr. Parsons put into evidence, which is Mr. Lightfoot's Selective Service Record, particularly to this sheet which is called "Enlisted Record and Report of Separation, Honorable Discharge," and the little box in the second column at the right of the page which says, "Date of Separation, 29 November, 1945; Place of Separation, Separation Center, Fort Sheridan, Illinois."

903 By Mr. Abt:

Q. You testified, Mr. Witness, about what you called a meeting of Communist Veterans?

A. Yes, sir.

Q. When did you say that took place?

A. At 3133 South Halsted Street.

Q. No, when?

A. When? March 31, 1946, I think.

Q. March 31, 1946?

A. Yes, sir.

Q. Is that the date you gave us yesterday?

A. Yes, sir.

Q. Didn't you testify yesterday, Mr. Witness, that that meeting took place on April 4, 1947?

A. Yes, that is right, I am sorry.

Q. How many people were there?

A. About thirty; I am not sure how many people were there.

Q. You are not sure how many were there?

A. No.

Q. It could have been more than thirty?

A. Yes, it could have been.

Q. It could have been a hundred?

A. No, I don't believe so.

904 Q. You don't believe so.

You also testified about a meeting held on July 16,

1947, at the Ashland Auditorium. Do you remember your testimony about that meeting?

A. Yes, I remember.

Q. How many people were at that meeting?

A. There were quite a few.

Q. Well, quite a few? A couple of thousand?

A. A couple of hundred.

Q. A couple of hundred?

A. Yes.

Q. Wouldn't a couple of thousand be closer?

A. No, sir.

Q. What?

A. No, sir.

Q. Not more than 200?

A. Oh, I would say two, three hundred.

Q. Could it have been a thousand?

A. No, sir, I don't believe there were a thousand.

Q. You don't believe so?

A. No, sir.

Q. You said that you heard Mr. Lightfoot speak at that meeting, is that right?

A. Yes, sir.

905 Q. And you testified that he said that he and several others were called before the Investigating Committee and were to bring in the files of the Communist Party, isn't that what you testified to?

A. That is right.

Q. What Investigating Committee did he say had called him in?

A. I believe it was the Broyles Committee in Springfield; I am not sure what the Committee was.

Q. The Broyles Committee?

A. I believe it was; I am not sure, now.

Q. Isn't it a fact, Mr. Witness, that in 1947 there was no Broyles Committee?

Mr. Parsons: I object.

The Court: He may answer, if he knows.

Mr. Parsons: The question isn't based upon logic, and it isn't set up by proper questions in advance.

The Court: If he knows.

By Mr. Abt:

Q. Do you know, Mr. Witness, whether or not there was a Broyles Committee in 1947?

A. I don't know. I know only that he was called before an Investigating Committee.

906 Q. All you know is what you heard him say, isn't that right?

A. Correct.

Q. What I asked you was whether you heard him say what Committee he had been called before.

A. I believe he said, but I don't recall what it is now.

Q. You don't recall?

A. No.

Q. But you are very sure that he said he had been called before a Committee?

A. Yes, sir.

Q. Now to your knowledge was he ever called before a committee in 1947?

A. Yes.

Q. He was?

I am not asking you now what he said, Mr. Witness, I am asking you whether, to your knowledge, Mr. Lightfoot was ever called before any kind of an investigating committee in 1947?

A. That is what he said.

The Court: Well, outside of what he said, do you know?

The Witness: I believe he was.

907 By Mr. Abt:

Q. Isn't it a fact, Mr. Witness, and wasn't it well known among Communists in Illinois that Mr. Lightfoot appeared before the Broyles Committee in 1949 and 1950, and not in 1947 at all?

The Court: Do you know whether or not that is the fact?

The Witness: No.

The Court: What is it?

The Witness: I don't know.

By Mr. Abt:

Q. You don't know.

And don't you know, Mr. Witness, and wasn't it a well known fact among Communists in Illinois that Mr. Lightfoot was not called before the Broyles Committee?

A. I don't know.

Q. Don't you recall hearing discussions, Mr. Witness, and reading in The Daily Worker—

Mr. Parsons: I object, your Honor.

The Court: Let him finish the question.

Mr. Parsons: I think the witness' answer already given has precluded the questions being asked.

The Court: Let him finish the question.

908 Mr. Abt: I will start over again.

By Mr. Abt:

Q. Don't you recall, Mr. Witness, being told and reading in the "Daily Worker" that Mr. Lightfoot voluntarily asked to appear before the Broyles Committee?

Mr. Parsons: I make my objection now that the witness has already testified that he didn't know; this precludes the question that counsel is now asking.

Mr. Abt: I am not bound by the witness' first answer.

The Court: He may answer.

The Witness: No, sir, I am not sure.

By Mr. Abt:

Q. You testified about a meeting to celebrate the 100th anniversary of Marxism?

A. That is right, yes, sir.

Q. That was held at the Ashland Auditorium?

A. Yes, sir.

Q. When was that?

A. On September 11th.

Q. What year?

A. 1950.

909 Q. 1950? Didn't you testify—

A. Or 19—

Q. What?

A. I don't know the date.

Q. You don't remember any more.

Didn't you testify yesterday it was September 11, 1947?

A. '47? Well, that is when it was.

Q. Didn't you so testify yesterday?

A. Yes, I so testified.

Q. Today you have forgotten.

How many were present at that meeting?

A. It was a good crowd there. I can't tell you how many there were.

Q. 500?

A. 500?

Q. I am asking you.

A. Yes. I said before 500, I would say.

Q. About 500.

Could it have been more?

A. I don't think so.

Q. You testified that you heard Gil Green speak at that meeting?

A. Yes, sir.

910 Q. And you testified, did you not, yesterday, that Gil Green said that he hoped on the 150th, or perhaps—and you weren't sure about this, I understood—the 200th anniversary of Marxism, that he could celebrate the Soviet Republic of the United States?

A. Yes, sir.

Q. Now which did he say, 150th or the 200th anniversary?

A. He said "And next anniversary we hope that our children and grandchildren will celebrate the next anniversary—our children and grandchildren will celebrate the anniversary of the Soviet Republic of the United States."

Q. Didn't you testify as follows yesterday on this question, Mr. Witness—

It is in the transcript at page 764, Mr. Parsons:

"—and that he hopes that the next anniversaries—now I don't remember what he said, 150th, 200th anniversary, the next anniversary he hopes to celebrate the Marxism in the United States and the Soviet Republic of the United States."

Isn't that what you testified yesterday?

911 A. Yes.

Q. Now I am asking you to think back and to tell us if you remember now whether he talked of the 150th anniversary or the 200th anniversary?

A. I wouldn't swear to that.

Q. But it was either the 150th or—

A. It was an anniversary that he was talking about.

Q. It was either the 150th or the 200th, is that right?

A. He said—I know positive that he said the "next anniversary."

Q. The next hundredth anniversary, is that right?

A. I am not sure about whether it is 75th, or 100th, or 150th, or 200th, or 250th. I know it was "the next anniversary."

Q. Mr. Witness, this anniversary meeting was to celebrate the 100th anniversary of Marxism, isn't that right?

A. Yes, sir.

Q. Now isn't what Mr. Green said—didn't he refer to

a celebration of the next hundredth anniversary of Marxism, isn't that what he was talking about?

A. As I said, I report only what I heard, and I have reported "the next anniversary."

912 Q. But here you said the 150th or 200th anniversary when you testified yesterday.

A. I presumed that. I didn't say that he said it. I said "The next anniversary."

Q. Now you testified that John Gates spoke at this meeting, did you not?

A. Yes, sir.

Q. And you testified yesterday that he made some comment about the Tsar and the Pope?

A. Yes, sir.

Q. Was it not the position of the Communist Party at that time, Mr. Witness, that one of the special problems before it was to make clear to the Catholic people of Illinois that Communism was not their enemy?

A. That is what they said, but that is what they don't do.

Q. Just a minute, Mr. Witness. Just answer the questions.

As a matter of fact, Mr. Witness, you attended the 1947 Illinois Convention, did you not?

A. Yes, sir.

Q. That was held when?

A. What convention was it, '49? It that what you

913 are speaking of?

Q. I am speaking of the 1947 convention.

A. '47. That was on November 28, 29 and 30.

Q. 1947, right?

A. '47.

Q. Was not this position of the Communist Party set forth in one of the convention resolutions which you identified yesterday?

A. Yes, sir.

Q. It was?

A. Yes, sir.

Mr. Abt: If your Honor please, I would like to read to the jury just a couple of sentences from one of these resolutions.

Mr. O'Donell: That resolution is not in evidence, your Honor, I might point that out.

Mr. Abt: I am sorry.

I meant to take that up the first thing this morning.
We have no objection to the offer of the resolutions.
The Court: It may be received.
What is the exhibit number?
Mr. Abt: That is Exhibit 84.
914 Mr. O'Donnell: In that event, your Honor, may I have just a moment?
We want to see the exhibit.
I had completed my offer on this exhibit, your Honor. We are offering the exhibit with particular reference to Resolution No. 6, which is "Draft resolution of Party education and cadre training."
Mr. Abt: I assume, your Honor, that the receipt in evidence of this exhibit is on the same terms as the other exhibit; that is to say, the Government may read what it cares to read during its part of the case, and we may read what we care to read during our part of the case.
The Court: That is right.
Mr. O'Donnell: During their part of the case, that is correct, we have no objection to that.
Also the "Draft Resolution" with regard to "literature", and the Resolution No. 8 on the "press."
The Court: All right, Mr. Abt, you may proceed.
915 Mr. Abt: Ladies and gentlemen of the jury, I just want to read you a few brief sentences from Government Exhibit 84.
Mr. O'Donnell: Your Honor, I am going to object to his reading at this time, if it is on his case now. This is the Government's witness, and he is cross-examining the Government's witness, and I have no objection to questions of the witness, and he has questioned him very freely, but I think it should be clearly understood that this was for the purpose of cross-examination and it is not part of his case.
The Court: That is right, Mr. Abt.
Mr. Abt: Let me tell you where we are in this, your Honor: It seems to me I am entitled to read at this point. I asked the witness whether it isn't a fact that the 1947 convention had a resolution on the question which I have raised with him. He said that it had, and I simply now want to call the attention of the jury to two brief sentences from that resolution indicating that the convention did take a position on that question.
916 It is simply part of my cross-examination, your Honor, and that is all.

The Court: Yes, but what is his testimony about that?

Mr. Abt: His testimony is that the convention did take a position.

The Court: And you want to show that?

Mr. Abt: I simply want to show what it is.

Mr. O'Donnell: We have no objection to him showing what it is in their part of the case, but I think the reading should be part of the question. He should ask a question concerning the reading, if he wants that.

He has offered this as part of his case now, and that is the part to which we object.

The Court: Well, no, you have offered it in its entirety.

Mr. O'Donnell: We have offered the resolutions, the particular resolutions. We said we had no objection if they wish to offer the rest of it in their case.

Now I thought it was pretty clear that this is not part of their case.

917 The Court: Well, counsel is right, Mr. Abt.

Mr. Abt: Well, I may have misunderstood your Honor, but yesterday Mr. O'Donnell made an offer of this entire exhibit, all of these resolutions.

The Court: I thought he did this morning, too.

Mr. Abt: He did this morning, too, and he said he would read from certain portions.

The Court: That is right, he said he would read from certain resolutions.

Mr. O'Donnell: If I did, I did it inadvertently.

What I intended to do was offer this because it is clipped together, but with particular reference to particular resolutions.

I have no objection to the defendant using the rest of the resolutions, because they are clipped together, and it is obviously all part of the same whole, but, however, those particular resolutions to which he is referring are not offered as part of our case per se.

Now I have no objection to his using it as part of 918 his case, but is he proving his case through our witness, or is he cross-examining him? That is the only question I have in my mind.

Mr. Abt: If your Honor please, I think we are taking an awful lot of time about nothing. I want to read two sentences from this.

Mr. O'Donnell: Well, that is Mr. Abt's opinion.

The Court: All right, go ahead.

Mr. O'Donnell: I think, then, he should ask it in the form of a question.

The Court: Well, you ask him if that wasn't passed—or what he expected to read, is that what you mean?

Mr. Abt: That is all right, your Honor, I don't care.

Mr. O'Donnell: Ask him if that is the Party program, what he is reading.

The Court: All right.

By Mr. Abt:

Q. I will ask you, then, Mr. Witness, at this 1947 convention, didn't one of the resolutions that was adopted
919 at the convention contain the following language:

"Another special problem before our Party in the struggle for peace is to make clear to the Catholic people of our state that Communism is not their enemy."

Was there not such a statement in this resolution?

Yes or no?

A. Yes.

Q. Now, Mr. Witness, I want to ask you whether or not you made reports to the Federal Bureau of Investigation on the following meetings about which you testified yesterday, and let me ask you about the meetings one by one, and then you answer yes or no, that you did make a report or you didn't make a report.

First, the meeting of November 30, 1945?

A. Yes, sir.

Q. You did make a report?

A. Yes, sir.

Q. Second, the meeting of April 24, 1947?

A. Yes, sir.

Q. And third, the meeting of September 11, 1947?

A. Yes, sir.

920 Q. You reported to the FBI what took place at each of those meetings?

A. Yes, sir.

Q. You reported what the speakers said at those meetings?

A. Yes, sir.

Q. Did you report, Mr. Witness, what took place and what was said exactly as you testified here yesterday?

A. To the best of my ability.

Q. I don't think you understand the question, Mr. Witness.

You testified about what took place and what was said at those meetings yesterday, is that right?

A. Yes, sir.

Q. Your reports to the FBI on these meetings were in writing, were they not?

A. Yes, sir.

Q. Did your reports to the FBI correspond exactly to your testimony yesterday as to what was said and what took place at those meetings?

Mr. Parsons: I object as to materiality.

The Court: Sustained.

921 Mr. Abt: May we approach the bench for a moment, your Honor?

The Court: Very well.

922 (The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Abt: At this time, your Honor, I would like to move for an order in the alternative, either directing the Government to produce for our inspection this witness' FBI reports of the meetings of November 30, 1945; April 24, 1947 and September 11, 1947, or in the alternative for an order directing the Government to produce those reports for your inspection and for your determination as to whether or not those reports contradict the testimony of the witness here, with the understanding that in the event your Honor finds such a contradiction you will make the reports available to us as necessary for our defense.

Mr. Parsons: May it please the Court, it is for the reason I anticipated counsel would make this motion that I objected to his last question on the ground of immateriality.

I still object on the ground that reports of the witness are not material to this case. His testimony was not made

923 from those reports, but was made under oath without the aid of those reports, and his testimony here must be weighed and any discreditment of that testimony must be made by counsel without any testimony made by this witness out of this case, and not under oath.

His testimony, whether it corresponds with the reports would be immaterial, since he testified from his memory here and not from the reports.

If the Court please, we have had this question raised in every one of these cases, and very similar to other cases, and always in draft cases we have the same question arise.

Attorneys, counsel, will come in and they want to see the reports. And we constantly contend they are immaterial to any problem before the Court.

We had a long case that supported us, the Government, in this judicial district, and we rely on that.

Mr. Abt: Your Honor, I don't want to cite you a lot of law, although I could, but you will recall the Mathes decision in the case of *United States* v. *Schneiderman,* 106 F. Supp. 731, which was a Smith Act conspiracy case, where the same problem was presented.

924 Judge Mathes wrote a long and very learned opinion in which he traced the history of this type of case back to the case where Justice Marshall gave the decision in that case in which he held with the motion I made to you, your Honor, that the FBI reports should be submitted to you for your inspection, and in turn submitted to the defense for their use if you determine there was a contradiction between the witness' testimony, a material contradiction between the witness' testimony here, and what he reported to the FBI, and the rationale of that, of course, your Honor, is that neither the Government obviously nor the Court will attempt to withhold from the defense material evidence which goes to the credibility of the Government's witness.

Mr. Parsons: Your Honor, the reports themselves are not in evidence. They are not made under oath. Those reports were not made in prior hearings or transcribed proceedings, and they are not the foundation or the basis for discrediting this witness on prior testimony not made under oath.

In addition to that, they are part of the work papers of a Government agency of the United States, Tuohy *vs.*

925 Ragen case, which supersedes and follows the Schneiderman case.

The only purpose of this is to seek additional evidence in this case for other cases which are going on or which may be at this very time in existence in other parts of the country.

The Court: What do you say if he made a contrary statement or statements in those reports?

Mr. Parsons: If he made contrary statements in those reports and he had refreshed his recollection in his testimony on direct by those reports, or if he testified from those reports that would be different, but it would not be the basis for contradicting him here in his direct testimony

on the stand. His testimony on the stand here rests on his independent memory or independent knowledge, and those reports themselves would not be a foundation for discrediting that knowledge.

The Court: I will reserve my ruling. You go on with something else.

I want to see those reports. Will you have those reports in here?

Mr. Parsons: Let me be heard further on the law.

The Court: All right.

Mr. Parsons: Because it is a very serious matter,
926 and because a great deal of importance is attached to it.

This is the first of the Smith Act cases involving a single individual, and we would like to feel that, whatever the ruling is that is made, it will serve as a precedent in those other cases following it, and that the ruling should be one which reflects careful consideration.

The Court: I will reserve my ruling.

Mr. Parsons: Under the exigencies of the case, your Honor.

The Court: I will reserve my ruling.

Mr. Abt: I have one or two more questions on my examination.

In the event that Judge Sullivan should order those proceedings, the reports of the FBI here to be shown to us, and allow us to use them, I assume the witness can be recalled?

The Court: Yes, if necessary.

Mr. Parsons: This is the hearing under 3229.

Mr. Abt: We are not discussing the merits.

The Court: Will the witness be here?

Mr. Parsons: Yes, the witness will be here.

The Court: That is all he is asking.

927 Mr. Abt: Yes.

The Court: All right.

Mr. Abt: I have just a few more questions.

928 (The following proceedings were had in open court, in the presence and hearing of the jury.)

By Mr. Abt:

Q. Now, Mr. Witness, I have only a few more questions. I will show you Defendant's Exhibit 3 for identification, Mr. Witness. It is a book, and the title is "History of the Communist Party of the United States," and the author is William Z. Foster. I will ask you if you have seen this book before.

A. Yes, sir.
Q. Did you own a copy?
A. I did own a copy.
Q. You bought a copy?
A. I bought a copy.
Q. You bought a copy in your Club?
A. Yes.
Q. The book was sold in your club?
A. Yes.
Q. When was that sold in your club?
A. Some years ago.
Q. 1952?
929 A. No.
Q. Earlier than that?
A. I believe it was earlier than that.
Q. Mr. Witness, to refresh your recollection, I call your attention to the flyleaf of the book, in which it is stated, "Copyright 1952" by International Publishers, Inc. Does that refresh your recollection as to when you bought it?
A. No.
Q. Do you want to look at that?
A. I know I purchased it. I don't know when I purchased it.
Q. Do you still say you purchased it before 1952?
A. No, I couldn't have.
Q. You couldn't have?
A. No.
Q. That is right. Was this book discussed in your club?
A. We were advised to read it.
Q. You were advised to read it?
A. Yes.
Q. By the literature director of your club?
A. Yes.
Q. He told all members of the club to buy and
930 read the book, is that right?
A. Yes.
Q. Didn't he tell the members of the club it was an authoritative history of the Communist Party?
A. Yes.
Q. Didn't he tell them it was an authoritative statement of the Communist Party positions on various questions of the day?
A. Yes.
Q. Now, Mr. Witness, I will show you Defendant's Ex-

hibit 2 for identification, a book which has the title of "Twilight of Capitalism" by William Z. Foster, and ask you if you have ever seen that book before.

A. I don't remember.

Q. You don't remember?

A. No.

Mr. Abt: All right. Your witness, Mr. O'Donnell.

The Court: With the exception of the matter that we discussed here at the bench.

Mr. Abt: Of course, your Honor.

931 *Redirect Examination by Mr. Parsons.*

Q. Mr. Witness, Defendant's Exhibit 3 was shown to you?

A. Yes.

Q. By Mr. Abt, is that correct?

A. Yes, sir.

Q. And you stated that you were told it is an authoritative—(Addressing Mr. Abt)—what is your phrase, Mr. Abt?

Mr. Abt: It is yours, while you are phrasing, Mr. Parsons.

By Mr. Parsons:

Q. (Continuing.) —authoritative document on the Communist Party in the United States, is that right?

A. Yes, sir.

Q. In the light of your knowledge and experience in the Communist Party of the United States, do you know whether or not this book repudiates any of the principles of Marxism-Leninism?

Mr. Abt: I object, your Honor.

The Court: He may answer.

932 The Witness: I must have said that I never read that book.

By Mr. Parsons:

Q. You went to the book store, the Modern Book Store, didn't you?

A. Yes, sir.

Q. Didn't you, Mr. Czarnowski?

A. Yes, sir.

Q. And you testified here on direct examination it was at 64 West Randolph Street?

A. Yes, sir.
Q. That is where it is now, isn't it?
A. That is where it is now, and that is where I got my literature.
Q. You did go to it when it was in the other location?
A. Yes, on Washington Street, in a basement.
Q. But when you were asked on direct examination what it is, you said it was a Communist book store, and when you were asked where it is you said at 64 West Randolph Street, is that right?
A. Yes, sir.
Q. And that is where it is now?
A. Yes, sir.
Q. This meeting that you attended, where there
933 was a discussion as to the "cease fire" in Korea, was that a union meeting or a Party meeting?
A. Where I made that speech, you mean?
Q. Yes, where you made that speech.
A. Can I make an explanation how that came about?
Q. No. Please answer. Was it a union meeting?
A. Yes, it was a union meeting.
Q. It was not a Party meeting?
A. No, sir.
Q. You made a speech, sir?
A. Yes, sir.
Q. Was that a written speech?
A. Yes, sir, it was.
Q. Just a minute. You write?
A. No, sir. I gave the basic of it, but it was written by others.
Q. By whom was it written, sir?
A. Either by Charles Wilson or Klinger.
Q. Who is Charles Wilson?
A. Charles Wilson was secretary, he was at that time secretary of the Section.
Q. What?
A. Of the Communist Party.
Q. Who was the other?
934 A. Ed Klinger.
Q. Who is Ed Klinger?
A. He is a member of the Communist Party in La-Grange.
Q. Were you told by either of them to read that speech at that union meeting?

A. Yes, they asked me to. They said they have to mobilize the parents who had children in Korea, to demand the return of the boys from Korea.

935 By Mr. Parsons:

Q. This PTA Association, of what school is that, sir?
A. Argo, in Argo and Summit.
Q. Do you have children in that school?
A. I did have.
Q. Did you have children in that school at the time when this protest on the discrimination was made in that school?
A. Not in the public school. She was in high school at that time, the girl.
Q. Had you visited the public school, yourself?
A. Yes, I visited.
Q. Had you talked with any of the students or pupils of that school, around that time?
A. My children, yes.
Q. Had you talked with them, concerning whether or not there was any discrimination in that school at that time?
A. Yes.
Q. Do you know whether or not there was any discrimination in that school at that time.
A. Not that I know of; no, sir.
Q. In other words, you say there was not any dis-
936 crimination?
A. There was not.
Q. Who, then, instigated this protest that there was discrimination, if you know?
Mr. Abt: I object to that.
The Court: The form is bad.

By Mr. Parsons:

Q. Who, then, got in motion the protest, if you know?
A. The PTA was under the control of the Communist Party at that time.
Mr. Abt: Move to strike it.
The Court: Yes, strike it.

By Mr. Parsons:

Q. Do you know who in the PTA was a member of the Communist Party at that time?
A. Do you wish to know the names?
Q. Yes.

A. Beatrice Jones, Florence Gowgiel, both from Argo, and Ed Klinger.

Q. And was this protest begun by them?

A. It was instigated by them.

Mr. Abt: I object, your Honor.

The Court: It may stand.

937 By Mr. Parsons:

Q. Now, in this factory where you worked there was an upgrading of Negroes, was there not?

A. Yes, sir.

Q. And the Communist group there advocated FEPC, did it not?

A. Yes, sir.

Q. Do you know whether or not also the Mayor's Commission on Human Relations in Chicago advocated that in that factory?

A. It might have. I can't tell you, I don't know.

Q. Do you know whether or not the State of Illinois, when the Governor's Commission on Human Relations—

A. Yes.

Q. (Continuing.) —advocated that at that time, at that factory?

A. Yes.

Q. This school that was located on South Parkway, what was the name of that school, Mr. Czarnowski?

A. The Workers' School.

Q. It met in one of the rooms operated by the CNIDA?

A. Yes, sir.

938 Q. You don't know what CNIDA means?

A. No, I never knew until now, when it was mentioned. I couldn't repeat it.

Q. You don't know that is the Central-Northern Illinois District of Negro Women's Clubs, do you?

A. No, I don't know.

Q. You don't know whether that is still located at that location?

A. No, I do not know.

Q. You don't know whether they rented their rooms to many organizations?

A. Do you wish to know positive?

Q. ~~I am asking you.~~

A. I don't know.

Q. Was that a November meeting, 1945, where you say you saw Claude Lightfoot in uniform?

A. Yes, sir.

Q. When you first saw him, was he down in front or up on the platform?

A. He was in the front of the hall.

Q. When Patterson welcomed the veterans home, did he welcome just Claude Lightfoot, or did he welcome every veteran?

A. He welcomed all of the veterans, and when he
939 mentioned Claude Lightfoot's name, all present rose and cheered, and I surmised he was a bigwig, at that time.

Q. You were asked on cross-examination, Mr. Czarnowski, about the position of the Communist Party on the Catholic Church.

A. Yes, sir.

Q. Do you know that position? Just answer yes or no.

A. Yes.

Q. What is it?

Mr. Abt: I object, your Honor.

The Court: I didn't get that question.

Mr. Parsons: He said he knew the position of the Communist Party as to the Catholic Church.

The Court: Sustained.

By Mr. Parsons:

Q. What is it?

A. They—

The Court: No.

Mr. Abt: It was sustained.

Mr. Parsons: Was it sustained?

The Court: Yes.

940 Q. Now, Mr. Czarnowski, in your testimony of yesterday and your testimony of today, were you testifying from your memory yesterday and today?

A. Yes, sir.

Mr. Parsons: No further redirect.

The Court: Any further cross?

Mr. Abt: Just a couple of questions, your Honor.

Recross Examination by Mr. Abt.

Q. On this speech that you made in your union with reference to a cease-fire in Korea—

A. Yes, sir.

Q. (Continuing.) —you gave Charlie Wilson the basis for the speech, did you not?

A. Yes, sir.

Q. You told him what you wanted to say?

A. Not all of it. I just told him my boy was in the Service, he has that rank, and what school he attended, and—

Q. All right.

A. (Continuing.) But the main thing—

Q. Charlie Wilson then wrote the speech, is that right?

941 A. Yes.

Q. But you really wanted a cease fire in Korea at the time you made that speech, didn't you?

A. I wanted it when the job is done.

Q. Now, the public school in Argo, that is in an interracial neighborhood, isn't it?

A. Yes, sir.

Q. To your knowledge, in 1950 and 1951 were there Negro children in that school?

A. Yes, sir.

Q. You know that for a fact?

A. Yes, sir, I live next to the school.

Mr. Abt: No further questions.

The Court: Anything further?

Mr. Parsons: No further redirect.

The Court: Pardon me just a moment, call the next, you may step down.

(Witness excused.)

The Court: Call the next.

Mr. Parsons: The next witness, your Honor, is on his way here.

The Court: Have him available.

Mr. Abt: If your Honor please—

Mr. Parsons: There was some confusion as which
942 was the next witness, and they are changing it, straightening it out now.

WILLIAM GARFIELD CUMMINGS, called as a witness on the part of the Government, having been first duly sworn, was examined and testified as follows:

Direct Examination by Mr. Parsons.

The Court: What is your name?
The Witness: William Garfield Cummings.
The Court: Where do you live?
The Witness: Toledo, Ohio.
The Court: What do you do?
The Witness: I am employed at the Electric Auto-Lite Company.
The Court: Where at?
The Witness: Toledo, Ohio.
The Court: Proceed.

By Mr. Parsons:

Q. Do you have any other business or occupation?
A. I am a consultant for the Federal Communications Commission.
943 Q. Do you have any other—
A. Well, that is about it.
Mr. Abt: I am sorry. Did he say "Federal Communications Commission?
The Witness: F. C. C., Federal Communications Commissions.

By Mr. Parsons:

Q. Mr. Cummings, don't lean into the microphone, please.
Are you now a member of the Communist Party?
A. I am not.
Q. Have you ever been a member of the Communist Party?
A. I have.
Q. When were you a member?
A. I was a member of the Communist Party from February of 1943 until May of 1949.
Q. Why did you join the Communist Party?
A. I joined the Communist Party after consulting with the agents of the Federal Bureau of Investigation.
Q. Was it at the request of the Federal Bureau of Investigation?

A. At the request of the Federal Bureau of Investigation.

944 Q. When did you leave the Party, did you say?

A. I left in 1949, May, 1949.

Q. And why did you leave?

A. I testified in the trials in New York City.

Q. During the course of your membership in the Party, have you held any positions in the Party?

A. I have.

945 Q. What positions have you held?

A. I was first Press Director of the Birmingham Club of Toledo, Ohio.

Q. When was that?

A. That was in 1943.

Q. Go right ahead.

A. And I was also Vice-Chairman of the Birmingham Club.

Q. When was that?

A. The latter part of 1943.

Q. Go right ahead.

A. In 1944 I became a member of the State Committee. I was also Vice-Chairman of the Communist Party in Toledo, Ohio, and I served as Press Director of the Communist Party of the City of Toledo, Ohio.

Q. When was that?

A. That was from 1944 through 1946.

Q. Now, did you attend any Communist schools or training programs?

A. I did.

Q. When did you attend your first one and where was it?

A. The first school I attended was called the Industrial School in Cleveland, Ohio, in 1944.

946 Q. Who was in charge of that school?

A. Mr. Gus Hall, I believe was in charge of that school.

Q. How long was that?

A. I am sorry, Arnold Johnson was in charge of that school.

Q. How long was that, how long did it last?

A. Seven days.

Q. Then the next one, if there was one?

A. Well, I attended a couple of schools in the City of Toledo, Ohio, and then I attended a National Training School in Chicago, Illinois, in 1945—December, 1945.

Q. In what month?
A. December, 1945.
Q. What was the nature of that school?
A. The nature of that school was—there was several National Training Schools set up throughout the country. The one in Chicago was known as the Mid-West National Training School, and it was to train cadres—professional revolutionaries, in the Communist Party.

Mr. Abt: If your Honor please, I object. I object
947 to the characterization. No foundation has been laid.

Mr. Parsons: I submit, your Honor, the witness with his background already testified to may so characterize the nature of the school he attended.

The Court: That may go out.

By Mr. Parsons:

Q. Were there courses of instruction in that school, sir?
A. There was.
Q. Text books were used?
A. Text books was used.
Q. Would you recognize some of them if you were to see them now?
A. I would.
Q. I show you Government Exhibit 26, which is in evidence. Is that one of them?
A. This is one of the books, sir, they used in that school.
Q. Government Exhibit 18—

Mr. Abt: Will you give us the names, too, if you will, please?

Mr. Parsons: Exhibit 26 is "History of the Com-
948 munist Party of the Soviet Union."

Mr. O'Donnell: I believe that is No. 22, Mr. Parsons.

Mr. Parsons: Thank you. The "2" looks like a "6". Will you correct the record to show that exhibit to have been No. 22?

Government Exhibit 18, "The Communist Manifesto", that is one of them?

The Witness: This is one we used in that school.

By Mr. Parsons:

Q. Government Exhibit 23, "State and Revolution", is that one of them?

A. This is also one that was used.
Q. Government Exhibit 19, "Foundations of Leninism" by Joseph Stalin, is that one of them?
A. This is one of them.
Q. And Government Exhibit 21, "Problems of Leninism", by Joseph Stalin, is that one of them?
A. This is also one of them.
Q. Do you know the defendant Claude Lightfoot?
A. I do.
Q. Do you see him in the court room?
949 A. I do.
Q. Would you point him out to the Court and jury here?
A. He is second from the end of the table there (indicating).
Q. When did you first meet Mr. Lightfoot?
A. I met Mr. Lightfoot in August of 1948.
Q. August of 1948.
Where did you meet him?
A. I met him at a National Convention of the Communist Party of the United States of America in New York City.
950 Q. Where did that convention meet, sir?
A. That convention met at, I believe it was, the Ritz Plaza Hotel in New York City.
Q. Over how long a period of time did the convention last?
A. I believe it was three days.
Q. Did you see him during those three days?
A. I did.
Q. How many times did you see him during those three days?
A. Well, I saw him at each session of the convention.
Q. Where was he at each session of those conventions?
A. He occupied the speakers' platform.
Q. Who else were on the speakers' platform?
A. There was Eugene Dennis, William Z. Foster, Pete Gaspari, Elizabeth Gurley Flynn, and I can't recall at the moment—there were about ten people.
Q. How many in all were there?
A. About ten people.
Q. Were there others on the platform that you know of, other than the ten?
A. I cannot recall the others.

Q. He was on the platform through each of the sessions?

951 A. Each of the sessions.

Q. Did he perform any other function that you know of?

A. He chaired one session.

Q. What do you mean by "chaired", sir?

A. He was chairman of the entire meeting at one session.

He also gave a report.

Q. Did you meet him personally?

A. I did.

Q. Who introduced him to you?

A. Mr. Eugene Dennis.

Q. Who was Mr. Eugene Dennis?

A. Who was Secretary of the Communist Party, National Secretary of the Communist Party, U. S. A.

Mr. Parsons: Your witness.

Mr. Abt: Can we have a moment, please?

Mr. Parsons: Yes.

Mr. Abt: No cross-examination.

The Court: Call the next. You may step down.

(Witness excused.)

952 JAMES CHARLES COOPER, called as a witness on the part of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name, sir?

The Witness: James Charles Cooper, C-o-o-p-e-r.

The Court: Where do you live?

The Witness: Birmingham, Alabama.

The Court: What do you do?

The Witness: I work for the Lamson-Session Bolt Company.

The Court: What business is that company in?

The Witness: They make bolts and nuts and rivets.

The Court: What do you do there?

The Witness: I work in the Threading Department. I assist the threaders.

The Court: In the what?

The Witness: In the Threading Department.

The Court: Proceed.

Direct Examination by Mr. Parsons.

Q. Mr. Cooper, how long have you lived in Bir-
953 mingham?
A. Off and on about thirty-eight years.
Q. Are you a member of the Communist Party?
A. I was.
Q. When did you join?
A. In 1932.
Mr. Abt: I'm sorry, I didn't get the date.
The Court: 19—what?
The Witness: 1932.
Mr. Parsons: When did you leave it?
The Witness: 1939.

By Mr. Parsons:

Q. That was some seven years?
Will you say yes; if you nod your head, the record doesn't show the nod.
A. Yes.
Q. Do you know the defendant in this case, Claude Mack Lightfoot?
A. I do.
Q. Do you see him in the courtroom?
A. I think I do.
That is him right over there, sir (indicating).
Mr. Parsons: May the record show the witness
954 has identified the defendant.
Mr. Abt: So stipulated.

By Mr. Parsons:

Q. When did you first meet Mr. Lightfoot?
A. I first met Mr. Lightfoot in New York.
Q. In New York?
A. New York City.
Q. What year was that, sir?
A. 1935.
Q. What part of the year?
A. At 35 East 12th Street.
Q. That is in New York City?
A. Yes.
Q. What is that, 35 East 12th Street, what was then at 35 East 12th?
A. That is the headquarters of the Communist Party.

Q. What were you doing there?
A. I was on a mission to prepare to go to Moscow.
Q. Do you know what he was doing there?
Mr. Abt: Your Honor, I object.
The Court: Well, what did you see him do?
The Witness: Well, he was there to attend the same meeting that I was there to attend.

By Mr. Parsons:

955 Q. Did you go to Moscow?
A. I did.
Q. Did he go?
A. He did.
Q. How did you go?
A. By boat.
Q. Did he go by the same boat?
A. Yes.
Q. You went together?
A. Yes.
The Court: Answer.
The Witness: Yes.

By Mr. Parsons:

Q. Did you see him while you were aboard the boat?
A. I did.
Q. Did you have any conversations with him then?
A. Casually, yes.
Q. Where did the boat land?
A. We landed at Cherbourg, France.
Q. Then how did you proceed?
A. We proceeded from Cherbourg to Paris by train.
Q. Did you see him on the train?
A. Off and on I did, on the train.
Q. Did you have conversations with him off and on?
956 A. Casually, conversations, yes.
Q. And from Paris, France, where did you go?
A. We went to Berlin.
Q. To Berlin?
A. Berlin, Germany.
Q. And from Berlin, Germany?
A. To Warsaw, Poland.
Q. Is that all by train?
A. All by train.
Q. And then from Warsaw, Poland?
A. Then to Moscow.

Q. Was Mr. Lightfoot on each of those legs of the trip?
A. Yes.
Q. When you arrived in Moscow, what did you do?
A. We arrived in Moscow by train.
We were immediately put into cars and taken to the Comintern Building in Moscow.
The Court: To the what?
The Witness: To the Comintern Building.
The Court: You may recess until 2 o'clock.

(A recess was taken until 2:00 o'clock P. M. of this day, Wednesday, January 19, 1955.)

957 Before Judge Sullivan and a Jury.

Wednesday, January 19, 1955.
2:00 o'clock P. M.

Court met pursuant to recess.

Appearances:

Mr. Parsons,
Mr. O'Donnell,
on behalf of the Government;

Mr. Abt,
Mr. Crockett,
Mr. Clayton,
on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

And thereupon the following further proceedings were had herein:—

958 Mr. Abt: May we come to the bench for a moment, your Honor?

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Abt: If your Honor please, I should like at this time to move to strike the testimony of the witness Cummings on the ground that the only portion of his testimony which in any way was connected with the defendant Lightfoot was testimony to the effect that Mr. Lightfoot attended the 1948 convention and acted in some official capacity at that convention.

As your Honor knows, under Section 4(f) of the Internal Security Act, neither the holding of membership in nor officership in the Communist Party can constitute a crime against the United States. For that reason, I submit, your Honor, that his testimony is entirely irrelevant and immaterial to the issues here.

Mr. Parsons: Under the theory counsel advances, your Honor, every witness placed on the stand must have testified to the material facts of the accusation in the indictment.

Every witness is allowed to testify as to what he
959 knows, which may have some bearing upon the facts in the case, and we have a right to establish from the testimony and experience of any witness any part of the elements of proof which we feel are required to establish our case.

The fact that the witness' testimony was brief, that he did not go into further matters, is a matter for the Government to determine in the presentation of its case. I can't conceive of a situation where the defense would ask that the testimony of one witness who testifies as a material fact but not the entire ground should be striken because it doesn't do that.

The Court: I can see no harm it does the defendant. Motion denied.

Mr. Parsons: We have, your Honor, ready to submit, as we were instructed to submit prior to the adjournment for the noon recess, the three reports covering the three dates that were in question.

The Court: You have them here?

Mr. Parsons: We have them here and we wanted your Honor to review them, and we stand on our same position in this matter.

The Court: Yes.

Mr. Parsons: At the same time, if your Honor
960 finds that they will be of some aid in the defendant's attempt to discredit this witness—we submit they don't discredit him whatever, but if your Honor finds that they do, or that there should be some reason that they be submitted to defendant's counsel, then we feel they should also be placed in evidence and that we be allowed to call the witness back on the stand and place them in evidence.

The Court: All right. I will rule on that afterwards. Go ahead with this witness.

(The following proceedings were had in open court in the presence and hearing of the jury:)

961 JAMES CHARLES COOPER, called as a witness on behalf of the Government, having been previously duly sworn, was examined and testified as follows:

Direct Examination (Contd.) By Mr. Parsons.

Q. What, sir did you say the Comintern was?
A. That was the headquarters of the Communist International Bureau in Washington.
Q. Now, was Mr. Lightfoot with you there?
A. Yes.
Q. And after you left the Comintern, where did you go?
Mr. Abt: Comintern Hotel, I think he said.

By Mr. Parsons:

Q. Was it the Comintern Hotel?
A. The Comintern Building.
Q. After you left the Comintern Building, where, sir, did you go?
A. We went to various hotels.
Q. Where did you go?
A. I went to the Hotel International.
Q. Do you know where the defendant went?
962 A. I think he stayed at the Lukes Hotel. He didn't stay at the Hotel International.
Q. How long were you in Russia at that time?
A. As far as I can estimate, and it has been 19 years ago, about four months.
Q. What did you do during that four months?
A. We toured the city, went out on the collective various farms, and got a picture of the place in general.
Q. Did Mr. Lightfoot make any of those tours with you, sir?
A. Not with me on the tours; it was on various buses going to various places.
Q. By that you mean there was more than one tour at the same time?
A. Yes, sir.
Q. And you did not go with him on the same tour at the same time?
A. No.
Q. Did you see him during the four months that you were there?

A. Practically every other day or two I saw him.
Q. Where, for example, would you see him?
A. For example, I would see him where we eat at
963 the Lukes Cafeteria, downstairs at the hotel.
Q. Was that at your hotel?
A. No, sir. that is the Lukes Hotel, where he—that is another hotel.
Q. Would you have conversations with him then?
A. Occasionally we had conversations.
Q. In the course of your conversations did you talk with him at any time about Communism?
A. Well, occasionally we did.
Q. Do you remember any conversation about that?
A. Offhandedly, I remember—
Mr. Abt: Just a moment. I think the answer is yes or no; your Honor.
The Witness: Yes.
The Court: Yes.

By the Witness:
A. Yes.

By Mr. Parsons:
Q. Will you tell us that conversation?
A. Well, he—
Mr. Abt: I object.
The Court: Wait a minute.
Mr. Parsons: The foundation hasn't been laid, but I will be—
964 Mr. Abt: I object, your Honor, on the ground that my conversation that took place in 1935, 20 years ago, five years before the passage of the Smith Act and 20 years before the return of the indictment, is far too remote to have any relevancy or materiality whatsoever in this case.
Mr. Parsons: It may have some bearing on knowledge.
The Court: Too remote. Sustained.

By Mr. Parsons:
Q. Do you know what the purpose was for your being in Russia, sir?
Mr. Abt: I object.
Mr. Parsons: I asked him if he knew.
The Court: He may answer that.

By the Witness:

A. Yes.

By Mr. Parsons:

Q. What was it?

Mr. Abt: I object, your Honor.

The Court: He may answer.

965 The Witness: We attended the congress, the Seventh World Congress of the Young Communists International.

By Mr. Parsons:

Q. Was that the purpose for Mr. Lightfoot's being there, if you know?

A. Yes.

Q. Did he attend that Congress?

A. Yes.

Q. Did you see him there?

A. Yes.

Q. Do you recall any one occasion—

How long did the Congress last?

A. To my estimation, about five or six days.

Q. Yet you were there four weeks?

A. Yes.

Q. Or four months, which was it?

A. Four months.

Q. Do you recall any occasion when you saw him at the Congress?

A. Yes.

Q. What was that occasion?

A. The occasion when he spoke, at the Seventh World Congress of the Young Communists International.

966 Q. You heard him speak then?

A. I did.

Q. Where did this meeting take place?

A. At one of the large government buildings in Moscow; I don't know the name of it.

Q. How many people, if you recall, were there?

A. Oh, between five and seven thousand people.

Q. Were they people from Russia, if you know?

Mr. Abt: I object.

The Witness: No.

The Court: Sustained.

By Mr. Parsons:

Q. Do you know from where these people came?

A. From various countries all over the world.

Q. What language was used in speaking at the Congress?

Mr. Abt: Objection, your Honor. What is the materiality of that?

The Court: Yes, why is it material what language?

Mr. Parsons: Would you strike that voluntarily? I wish to withdraw the question.

967 By Mr. Parsons:

Q. After Mr. Lightfoot finished speaking, what happened, if you recall?

A. I recall that he had a great reception there, that they honored him by carrying him from the rostrum and hugging him and kissing him after that speech.

Q. Did you return with him to the United States?

A. I did.

Q. When did you leave him in the United States?

A. In '35.

Q. In what part of '35, sir?

A. I don't remember the exact month. I believe it was September.

Q. September of '35?

A. Yes.

Mr. Parsons: No further questions.

Mr. Abt: No cross examination, your Honor.

(Witness excused.)

Mr. Abt: May we approach the bench while the next witness is coming in, your Honor?

The Court: Very well.

968 (The following proceedings were had in open court, in the presence but outside the hearing of the jury:)

Mr. Abt: Your Honor. I move to strike all of the testimony of this witness as it has absolutely no materiality or relevancy to this proceeding. It shows only that Mr. Lightfoot attended some kind of a conference in Moscow, and obviously it is introduced only for its possible prejudicial effect on the jury. It all happened twenty years ago.

Mr. Parsons: It goes to motives, your Honor, intent, background. It is the beginning of the membership of the Defendant, and we must prove that he was a member, that

he was a part of this, that he had knowledge of the aims and objectives, that he had a basis on which that knowledge might be inferred.

We have to begin at the beginning of these things to show knowledge and show the entire picture. As we said in our opening statement, you can't carve out the knowledge from the brain and show it to the individual. It
969 is too bad that we were unable to get the conversation with the Defendant into evidence, so we feel that the testimony of this witness, combined with that of the other witnesses, goes to show intent, knowledge and motive behind his conduct during the statutory period.

One asks oneself why will a man who is guilty of conduct during the statutory period do it, what is the motive behind it, and obviously in this case—

The Court: We have to guess at it, don't we?

Mr. Parsons: Motive we must get at, at all times, yes, sir.

Mr. Abt: It doesn't even help to get, your Honor, the fact that the man went to Moscow twenty years ago.

The Court: I will reserve my ruling on that.

(The following proceedings were had in open court, in the presence and hearing of the jury:)

970 The Court: Swear the witness.

SHIRLEY ROCHELLE SKINNER, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:

The Court: What is your name?

The Witness: Shirley Rochelle Skinner.

The Court: Spell the last name.

The Witness: S-k-i-n-n-e-r.

The Court: Where do you live?

The Witness: 2022 West Adams Boulevard, Los Angeles, California.

The Court: In what state?

The Witness: Los Angeles, California.

The Court: What if anything do you do?

The Witness: I am a librarian for an insurance company.

The Court: You are a what?

The Witness: A librarian.

The Court: For what?
The Witness: Grogan State Life Insurance Company.
The Court: Located where?
The Witness: Los Angeles, California.
971 The Court: Where, in what state?
The Witness: Los Angeles, California.
The Court: Proceed.

Direct Examination by Mr. Parsons.

Q. Miss Skinner, have you ever lived in Chicago?
A. Yes.
Q. When did you live in Chicago?
A. From my birth to 1950.
Q. Miss Skinner, have you ever been a member of the Communist Party?
A. Yes, I have.
Q. During what period of time were you a member of the Communist Party?
A. About the fall of 1946, about the fall of 1946 until January of 1948.
Q. Where?
A. In Chicago.
Q. What club, if any, did you belong to, or what group?
A. A culture club on the South Side of Chicago.
Q. Have you had any other connection with the Communist Party in Chicago?
972 A. Yes, I worked in the District Office.
Q. You worked where?
A. In the District Office of the Communist Party.
Q. Where was that located?
A. 208 North Wells.
Q. When did you work there?
A. From the early part of 1947 until January of 1948.
Q. What was your work in that office?
A. Clerical work.
Q. Can you describe that office for us as it was then?
A. Yes. It was a large, a very large room divided into two sections, actually an inner and an outer, and divided by a partition, with a door and a window.
In the outer office there was a reception room and I think two smaller offices, and in the inner office there were about five or six offices in the inner office.
973 Q. Do you know whose offices they were?
A. Yes, they were the offices of Ed Star, Gil Green,

Fred Fine, William L. Patterson, Alfred Wagenknecht, Lillian Goodman, and there were offices for the clerks, clerical people.

Q. Do you know the defendant in this case, Mr. Claude Mack Lightfoot?

A. Yes, I do.

Q. Do you see him in the court room?

A. Yes, I do.

Mr. Abt: I will stipulate.

By Mr. Parsons:

Q. Did he have an office in that building?

A. No, he didn't.

Q. Did you ever see him in that office at 208 Wells?

A. Yes, I did.

Q. On approximately how many occasions did you see him there?

A. Approximately once a month.

Q. With whom would you see him, if anyone?

A. I think he usually came in alone.

Q. What?

A. I think he usually came in alone. I am not sure.

974 Q. With whom did he talk?

Mr. Abt: May I interrupt? You asked approximately how long. What was the answer?

Mr. Parsons: She said approximately once a month.

The Court: A little louder, Madam.

By Mr. Parsons:

Q. With whom would he talk?

A. He would talk with practically everyone; Ed Star, Gil Green, Fred Fine.

Q. Do you know whether or not he did have an office in the Communist Party?

A. Yes, he did.

Q. Where was that?

A. That was on the south side of Chicago.

Q. Do you know the location?

A. On 43rd Street.

Q. Do you know what position he held?

A. Yes, as Chairman of the south side office.

Q. Have you ever been in the office on the south side?

A. Yes, I have.

Q. Miss Skinner, did you attend any schools while you were in the Communist Party?

975 A. Yes, I did. I attended the Abraham Lincoln School.

Q. Where did that meet?

A. On Washington Boulevard.

Q. Where, do you know?

A. I don't remember the exact address.

Q. When did you attend that?

A. In 1946.

Q. Did you take any course while you were there?

A. Yes, I took Fundamentals of Marxism.

Q. From whom did you take that course?

A. Claude Lightfoot.

Q. Did you attend any other school?

A. Yes, I attended a school in Wisconsin, the Lake Ivanhoe School in Wisconsin.

Q. Do you know who set that school up at Lake Ivanhoe?

A. Well, I think David Engelstein.

Q. Who was he?

A. He was an educational director.

976 The Court: Who was that?

The Witness: Dave Engelstein.

By Mr. Parsons:

Q. He worked where?

A. In the District Headquarters office, 208 North Wells.

Q. That was here in Chicago?

A. That's right.

Q. Was that school run by an office here in Chicago?

A. Yes, I think so.

Q. Miss Skinner, let me show you Government's Exhibit 54, which is a schedule of classes for full-time schools, July 12-20, 1947, carrying certain dates and certain classes and certain instructions.

Do you recognize that? Would you look at it, please?

A. Yes, I recognize it.

Q. What is it?

A. It is a schedule of classes for Lake Ivanhoe School.

Q. How do you recognize it?

A. I typed it.

977 Q. You typed this?

A. I typed it.

Q. Where did you type it?

A. In the District Office headquarters.

Q. District Office headquarters?
A. Yes.
Mr. Parsons: No further direct.
Mr. Abt: May I see the Exhibit?
Mr. Parsons: Yes.
Mr. Abt: Are you offering this?
Mr. Parsons: No, I have not tendered it, but you may cross examine.
Mr. Abt: No cross.
The Court: Call the next.
Mr. Parsons: Thank you.
The Court: Would you step down?

(Witness excused.)

Mr. O'Donnell: Might we approach the bench while we are waiting for the witness, your Honor?

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

978 Mr. O'Donnell: With reference to the reports I have given you, that Mr. Parsons gave you to inspect your Honor, with regard to the three meetings, I have been advised by the Federal Bureau of Investigation that they have checked these reports very carefully and they feel there is confidential information in the reports, and before they should be made available to the Defendant, if you should rule they should, we would like to have them ourselves, to inspect them as to that, and see that information was deleted from the reports.

In other words, it might disclose confidential information.

Mr. Abt: May I make the suggestion that we are crossing bridges before we come to them?

Mr. O'Donnell: I just wanted to make that suggestion to the Court.

Mr. Abt: If he has the reports they should be written reports.

Mr. O'Donnell: I just wanted to make that suggestion, your Honor, while we were waiting for the witness.

By the Court: Very well.

979 **JOHN BRZEK, called as a witness on behalf of the Government, having been first duly sworn, was examined and testified as follows:**

The Court: What is your name?
The Witness: John Brzek.
The Court: How do you spell the last name?
The Witness: B-r-z-e-k.
The Court: Where do you live?
The Witness: Milwaukee, Wisconsin.
The Court: What do you do, if anything?
The Witness: I work for the Wisconsin and Michigan Steamship Company, and I am a representative of the Longshoremen, 815 Local.
The Court: Of what?
The Witness: Of the Longshoremen.
The Court: The Wisconsin what?
The Witness: Wisconsin and Michigan Steamship Company.
The Court: What do you do there?
The Witness: I am longshoreman.
The Court: Just what does that mean?
The Witness: Loading and unloading the ships.
The Court: All right, proceed.

980 *Direct Examination by Mr. Parsons.*

Q. Mr. Brzek, is that the correct pronunciation?
A. That is correct.
Q. Are you a member of the Communist Party?
A. Not at the present time.
Q. Would you answer loudly so we can all hear you?
A. Not at the present time.
Q. Have you ever been a member of the Communist Party?
A. Yes, I was.
Q. When were you a member of the Communist Party?
A. From 1943 to 1947.
Q. Would you give us the circumstances of your joining the Communist Party?
A. I joined the Communist Party at the request of the FBI.

Q. Now, what club or group were you a member of at first?

A. I was a member of the South Side Branch of the Communist Club in Milwaukee, Wisconsin.

Q. Were you always a member of that branch?

A. I was a member of that branch until 1945.

Q. Then were you a member of another branch after
981 1945?

A. I was not assigned in any other branch. In 1945 the branches were broken up into industrial groups, and I was the only one in the marine industry, so there was no branch set up in my type of work.

Q. Was there anyone to whom you reported?

A. No, I went to classes and meetings.

Mr. Abt: Just a moment. I think the question has been answered.

The Court: Yes or no.

982 By Mr. Parsons:

Q. Did you go to classes?

A. Yes.

Q. And meetings?

A. Yes, sir.

Q. Where were they located, sir?

A. They were in Milwaukee, Wisconsin.

Mr. Abt: Where?

The Witness: Milwaukee, Wisconsin.

By Mr. Parsons:

Q. Did you hold any positions in the Communist Party while you were in it?

A. No, I did not.

Q. A rank and file member?

A. I was just a rank and file member.

Q. Did you have any special duties as such?

A. The only thing I did was take contact persons whose Daily Worker subscriptions had expired, and ask them to renew their subscription.

Q. Did you attend any instruction groups?

A. In Milwaukee?

Q. Yes.

A. I attended classes regularly in Milwaukee.

983 Q. Did you attend any instruction classes or groups outside of Milwaukee?

A. Yes, I attended the school for a week at Lake Ivanhoe, in Wisconsin.
Q. What school was that?
A. That was the Bolshevik School, held in July, 1947.
Mr. Abt: What? I couldn't hear you.
Mr. Parsons: That was a Bolshevik School.
Mr. Abt: If the Court please, I move to strike the characterization.
The Court: Yes, strike it out.
Mr. Abt: He said something about a Bolshevik School.
The Court: Yes, strike it.
Keep your voice up.

By Mr. Parsons:

Q. Were you in any way informed what kind of school this was?
A. When I was in the school—
Mr. Abt: Just a moment. The answer to that is yes or no.
The Court: Yes.
The Witness: When I—
Mr. Abt: Just a moment.

984 By Mr. Parsons:

Q. Were you in any way informed what kind of school it was?
A. Yes.
Q. In what way were you so informed, or at what time?
A. The first day I arrived at the school.
Q. By whom were you informed?
A. A woman by the name of Reva.
Q. Who was she?
A. She was in charge of that school.
Q. She told you what kind of school it was?
Mr. Abt: Just a moment. The answer should be yes or no, your Honor.
The Court: Yes or no.
The Witness: Yes.

By Mr. Parsons:

Q. When did this school meet?
A. I didn't hear the question.
Q. When did this school meet?
The Court: The classes.
The Witness: When?

The Court: Yes.

985 The Witness: Every day, for one week it met every day.

By Mr. Parsons:

Q. What was the week?

A. It was in July of 1947.

Q. When you left to go to the school, did you go directly to the school?

A. No.

Q. Where did you go?

A. I was under the impression—

Mr. Abt: Just a moment, your Honor.

The Court: Yes. The answer is no?

The Witness: No.

By Mr. Parsons:

Q. Where did you go?

A. I went to Chicago, Illinois.

Q. Where, in Chicago?

A. I don't remember the exact address. It was either Wells or State Street. It was on the second floor, on the corner.

Q. What did you see when you got there?

A. There were about 14 or 15 people in the room, and there was luggage on the floor, around the room.

Q. Did you have luggage with you?

A. Yes.

986 Q. Had you been instructed to bring luggage?

A. Well, I know—

Mr. Abt: Just a moment, yes or no, your Honor.

The Court: Yes or no.

By the Witness:

A. Yes.

By Mr. Parsons:

Q. Was this place where you met on the first or second floor?

A. The second.

Q. The second floor?

A. Yes.

Q. Now, after you got there and saw these people there, with luggage, what then did you do?

A. We were taken in cars and driven back into Wisconsin.

Q. How did you go back into Wisconsin?
A. By automobile. We went up Route #41.
Q. Where in Wisconsin did you go?
A. At a place called—we turned west off of #41 and we went to a place called "Lake Ivanhoe." It was a lake about half a mile away from this school that was called "Lake Ivanhoe."
987 Q. Could you describe this school for us?
Mr. Abt: If your Honor please, do we need all of these details?
The Court: Beg your pardon?
Mr. Abt: Do we need all of these details? What is the materiality?
The Court: Was it in a building?
The Witness: It was a wood frame building with artificial bricks.
Mr. Parsons: I was afraid counsel would object if I did not fully qualify the witness for that conversation.
Mr. Abt: We don't need a photograph of that building.

By Mr. Parsons:

Q. May I ask how large a building it was, how large a building was it?
A. It was a five-room residence, about, with an attic.
Q. Your classes were held in that building?
A. They were held in the screened-in porch in front of it.
Q. Would you speak louder, you are not speaking loudly enough?
988 They were held where, sir?
A. In a screened-in porch at the front of the building.
The Court: How many people attended?
The Witness: About ten.

By Mr. Parsons:

Q. What parts of the day were utilized in class study there?
A. The mornings were used for study, and the instructors came in in the afternoons.
Q. Where was the instructing given in the building?
A. Generally in the screened-in porch.
Q. Do you remember any of the courses that you took?
A. Well, I would like—we had a schedule and if I could see the schedule, it would refresh me.

Q. I show you Government Exhibit 54 marked for identification, and ask you if you recognise that.

A. Yes, I do.

Q. What is it?

A. This is the schedule of classes that was used at the school at Lake Ivanhoe.

Q. Do you recognise this particular schedule?

A. Yes, I do.

989 Q. Whose is it?

A. That is the one that I was given at the school.

Q. Do you remember any of the teachers that were there?

A. Well, I see their names there. I wrote in some of the names there, I recall them now.

Q. Regardless of the schedule—

Mr. Abt: That is his answer, he said he doesn't remember.

Mr. Parsons: No, he didn't say that. He says he saw the names and he remembers some. He saw the names written in it.

The Court: Do you recall, outside of looking at the schedule or exhibit?

The Witness: I remember Patterson and Lightfoot. I didn't see that on the schedule.

By Mr. Parsons:

Q. The teacher you refer to as Lightfoot, is that the defendant in this case, Claude Mack Lightfoot?

A. I understand he is.

Q. If you saw him in the court room now, would you recognize him?

A. I would.

Q. Would you look in the court room and see if you

990 see him?

A. He is the gentleman right there (indicating), the second one.

Mr. Parsons: Would you stipulate—

The Witness: The third one.

Mr. Abt: I don't know who he is pointing to.

The Witness: The third one.

Mr. Abt: The third one, yes, I stipulate.

Mr. Parsons: May the record show the witness identifies the defendant in this case?

991 Q. You took a course under him?

A. I did.

Q. Did you take more than one course under him?
A. He was there two days.
Q. Did you take more than one course under him, sir?
A. Yes.
Q. What courses did you take?
A. I would have to see the schedule.
Q. Would you look at Government's Exhibit 54 and then let me have it, please?
Does it refresh your recollection?
A. Yes, sir.
Q. What courses did he teach you?
A. "Strategy and Tactics" and "History and Role of the Party",
Q. Did you use any materials in connection with your studies up at Lake Ivanhoe?
A. Yes, we used pamphlets and books.
Q. I show you Government's Exhibit 55 marked for identification, which is a mimeographed pamphlet entitled "Democratic Centralism" and ask you if you recognize that?
A. Yes, I do.
992 Q. What is it, please?
A. It is the outline that they used at the classes Claude Lightfoot instructed.
Q. I show you Government's Exhibit 53, marked for identification, which is a magazine with the name of Eugene Dennis at the top, entitled "The People Against The Trusts", and ask you if you recognize that?
A. Yes, I do.
Q. What is that?
A. That is a pamphlet used in the course taught by the defendant Lightfoot.
Q. I show you Government's Exhibit 56, which is a brown paper-bound volume with on the back "History of the C. P. S. U.", and ask you if you recognize that?
A. Yes, I do.
Q. What is it, please?
A. It is a book used in the course of the classes taught by Lightfoot.
Mr. Parsons: May it please the Court, the Government offers in evidence Exhibits 54, 55, 56 and 53, which have been identified through the defendant as materials used
993 in connection with the courses "Strategy and Tactics" and "History and Role of the Party", classes taught by the defendant in this case in the course of his

attending the school for Communists in Lake Ivanhoe, Wisconsin.

Mr. Abt: If your Honor please, we just have not had a chance to examine them. These are all exhibits that were not on the list, with the exception—

Mr. Parsons: I was going to say I might withdraw the tender of No. 56 because it has already been received in evidence.

Mr. Abt: I am perfectly willing to stipulate 56 is in evidence as Government's Exhibit 22.

As to the others, we would like a little opportunity to look at them before your Honor rules.

The Court: All right.

Mr. O'Donnell: I gave you the outline this morning, "Democratic Centralism".

Mr. Abt: Sorry, I didn't know I had it, and did not know you were going to offer it.

I think we have time, your Honor, we won't be very long.

994 Mr. Parsons: Look at the originals, it is all right.

The Court: All right.

Mr. Abt: And I suggest we go right ahead.

The Court: Yes, go ahead.

By Mr. Parsons:

Q. Mr. Brzek, do you remember any of the things that Mr. Lightfoot taught you while you were there?

A. I remember some of them. I don't remember all of the details.

Q. Will you tell us something that Mr. Lightfoot did teach you?

A. He spoke on Browderism—

Q. By the way, this is in a course of your classes, is that right?

A. That is correct.

Mr. Abt: May we find out which class, your Honor, what was taught, what was said?

By Mr. Parsons:

Q. Were the students in these classes the same in both "Strategy and Tactics" as the students in the class on "History and Role of the Party"?

A. Yes, they were.

Q. I believe that is as far as I would care to go,

995 Counsel.

Will you now tell us what you were told?

A. Lightfoot told us about Browderism, and had the Communist Party had self-criticism at that time, Browder wouldn't have been able to lead the Party off the path of Socialism.

He also told us regarding the Russian Revolution, where the first attempt of the Russian Revolution failed, the strikers were driven back by the soldiers and later on a second revolution began by a series of strikes, there were strikes that spread all over and there was a shortage of bread, as I remember it, and the women joined the strikers.

Mr. Abt: I'm sorry, I didn't hear.

By Mr. Parsons:

Q. Would you speak loudly? It is difficult for us all to hear.

The Witness: There was a series of strikes that spread out in the second revolution—Russian Revolution—

The Court: Now Lightfoot was talking about Russia, was he?

The Witness: He is talking about Russia.

The Court: All right.

996 The Witness: And the women joined the strikers, and the soldiers at this time came on the side of the people and the Revolution was successful.

And he compared the American Revolution, that the American Revolution was a landowners' revolution, it wasn't a proletarian one.

By Mr. Parsons:

Q. Which American revolution?

A. The American Revolution.

Q. Which one was that? Do you mean the one in history?

A. In history.

The Court: The Revolutionary Wars?

The Witness: Revolutionary Wars.

Mr. Abt: 1776, I believe he is talking about.

997 By Mr. Parsons:

Q. Go right ahead, sir.

A. It was a land owners' revolution, and wasn't the proletarian revolution of the second revolution in Russia.

He also compared the Army's staff system with that of the Communist Party discipline, where the generals were

the highest authority in the army and there were colonels, lieutenants and sergeants; and he referred to us as the "privates" compared with the Army.

And then he went into some detail, saying, well, he may be a sergeant, but that was up to somebody else to determine, because of his advanced education in the Communist Party.

He spoke about the control that would be a problem, of the control of the Army and Navy.

Q. When would there be a problem of that sort?

A. When—well, the thing—I will go back to this, that the comparing of the Communist Party discipline with the Army's method of staff authority, he stated that when the time came we would have to be going, we would have to be ready to go where we were needed, and it wouldn't be
998 any excuses that you couldn't leave your wife or your children, and to take only what you needed, and he went into details, stating, "Well, you couldn't take a moving van full of things along," and wherever these strikes would occur you would be needed to help the movement, and not to be there would be the same as a soldier not being at his post.

If you weren't there, this post would be open, there wouldn't be anybody there to help the movement.

Q. Help what—what was that last word?

A. The movement.

Q. Yes, go right ahead.

A. He spoke on the fact of those who are accustomed to these luxuries, they will not want to give them up.

And then I believe he came along with this control would be a problem—

Mr. Abt: With what?

The Witness: A problem with the control of the Army and the Navy. But he brushed by that saying that that wasn't a problem for us, that was for the higher top officials of the Communist Party.

999 He then spoke on, that we would approach this to avoid bloodshed, but those who had the control wouldn't want to give up.

However, in capitalistic wars, it is not the capitalists that their blood is spilled. However, in this case it would be their blood.

Then he went on to explain that it wouldn't be a shooting, it would be more quiet methods of doing that blood end of it.

By Mr. Parsons:

Q. Doing that what?

A. The bloodshed end, the bloodshed, it wouldn't be by, say, shooting firearms, to be by a more quiet method. And in comparing the Army, he stated that the soldiers take orders from the top man, or from their superior officers without question in the time of war, even though they are going to face death.

And then he talked regarding the being ready to die, that this was not for certain individuals, for the benefit of certain individuals, that you may be there, at a place where you would be killed. However, those who would survive would receive the benefits of the future gen-
1000 erations, and then—.

Q. Was there anything else that he said?

A. He approached us again with, as I remember it, that we will try to avoid bloodshed and we will approach it to avoid bloodshed.

However, we will not be pushed off. If we have to spill blood, we will.

That was the last thing he said, that was his actual words, "If we have to spill blood, we will."

Mr. Parsons: Any cross?

Before cross-examination begins, may we again tender, your Honor, Government's Exhibits 53, 54, 55 and we have withdrawn 56.

Mr. Abt: No objection, your Honor.

The Court: They may be received.

Mr. Abt: May we suspend for about five minutes, your Honor?

The Court: The jury may recess for a few minutes. You may step down, please.

(Whereupon a short recess was taken.)

1001 The Court: You may proceed.

Cross-Examination by Mr. Abt.

Q. You say that you are a longshoreman, Mr. Witness?

A. Yes, sir.

Q. You are working as a longshoreman?

A. Yes, sir,

Q. You are also a representative of the Longshoreman's Union?

A. That is correct.

Q. That is the A. F. L. Longshoreman's Union?
A. Correct.
Q. That is the union that Joe Ryan used to be president of?
A. Yes, he was president. We broke away from Ryan's—
Q. It is still that union?
A. Yes.
Q. How long have you been a longshoreman?
A. I didn't get the question.
Q. How long have you been a longshoreman?
A. Oh, approximately 20 years.
Q. How long have you been a representative of that union?
A. I have been president since 1942.
1002. Q. Now you say you joined the Communist Party at the request of some agents of the F. B. I.?
A. That is correct.
Q. That was in 1943?
A. Yes.
Q. You made reports to the F. B. I. on your activities in the Communist Party?
A. I did.
Q. From 1943 to 1947?
A. Correct.
Q. Then you stopped in 1947?
A. I did.
Q. Now did you receive any money from the F. B. I. for the work you did for them?
A. I received no wages or salary; I received only the money spent for dues and literature.
Q. About how much would that be a week?
A. Well, whenever there was an occasion; I paid the dues, which were 50 cents a month, or to purchase certain literature.
The Court: A little louder, please.
The Witness: It wasn't any set amount during a week, but it was very small amounts.

By Mr. Abt:

1003 Q. Whatever you spent, you got reimbursed for, is that right?
A. That is correct.
Q. And you made reports to the F. B. I. on all of the meetings you attended?

A. I did.

Q. What was the most that you got from the F. B. I. in any week?

A. The most what?

Q. The largest amount of money that the F. B. I. paid you in any week while you were working for them.

A. Well, the only thing would be the week I went to Lake Ivanhoe.

Q. How much did you get then?

A. Well, I received just what the wages would have been.

Q. What your wages on the job would have been?

A. That is correct.

Q. How much would that be?

A. I don't remember; I would say $60, approximately.

Q. Now you said that one of your jobs in the Communist Party was to contact people whose subscriptions to the "Daily Worker" had expired, is that right?

A. It wasn't my job, but I was given names of
1004 people in the Bay View area that it was easy for me to contact.

Q. And you would contact these people?

A. I would.

Q. And you would urge them to renew their subscriptions to "The Daily Worker"?

A. Well, I would speak to them, that their subscription had expired, and request renewal.

Q. And request them to renew it?

A. Yes.

Q. And then you would report their names to the F. B. I.?

A. That is correct.

Q. Now you said you went to school in Ivanhoe in July, 1947, is that right?

A. That is correct.

Q. About seven and a half years ago, is that right?

A. July, '47, seven years ago.

Q. Now, when Mr. Parsons asked you a little while ago the names of the courses that you were taught at that school, you didn't remember the names of any of the courses, did you?

A. Not offhand.

1005 Q. Mr. Parsons had to show you that schedule before you remembered the name of any course you were taught, is that right?

A. That is correct.

Q. Then when you saw this schedule, you were able to tell what the names of the courses were, isn't that right?

A. That is correct.

Q. And when Mr. Parsons first asked you about the names of the courses that Mr. Lightfoot taught, you didn't remember that either, did you?

A. Not the exact name of the course.

Q. In other words, Mr. Parsons again had to show you that schedule before you remembered the names of the course that Mr. Lightfoot taught, isn't that right?

Mr. Parsons: I object, your Honor. I think the question is argumentation.

Mr. Abt: It is not argumentation at all.

The Court: He may answer.

Mr. Abt: Will you read the question?

The Court: Is that right?

The Witness: What, sir?

Mr. Abt: I don't think the witness got the ques-
1006 tion, and I asked the court reporter to read it.

(Question read by the reporter.)

By the Witness:

A. That is correct.

By Mr. Abt:

Q. Now what other teachers besides Mr. Lightfoot taught in that school?

A. What other teachers?

Q. Yes.

A. The gentleman on the end of that table, Leon Katzen.

Q. Leon Katzen?

A. I seen his name, that is how I remember his name.

Q. What is that?

A. I seen his name on the schedule.

Q. Otherwise you wouldn't have remembered that?

A. Not the full name.

Q. What other teachers taught at that school?

A. A fellow by the name of Patterson.

Q. Any others that you remember?

A. No, I wouldn't.

Q. What is that?

A. Well, Lightfoot.

1007 Q. Lightfoot. Well, you mentioned Lightfoot. Any other?

A. Not offhand that I remember.

Q. There were other teachers that taught at this school, isn't that right?

A. That is correct.

Q. But you don't remember their names?

A. No.

Q. What classes did Mr. Lightfoot teach at that school?

A. What classes?

Q. What were the names of the courses that Mr. Lightfoot taught at this school?

Mr. Parsons: I object, your Honor. It has been testified to, and the only purpose of this question at this moment is to try to use this question to test the witness' memory at this time.

Mr. Abt: Of course I am doing that.

The Court: He may answer.

Mr. Parsons: It is improper on cross-examination.

Mr. Abt: Will you read the question?

(Question read by the reporter.)

1008 By the Witness:

A. "Strategy and Tactics" and "The History—"

The Court: Louder.

By the Witness:

A. (Continuing.) "Strategy and Tactics" and "The History and Role of the Party".

By Mr. Abt:

Q. Now you testified to some remarks that Mr. Lightfoot made?

A. That is correct.

Q. In which one of those two classes did he say what you said that he said?

A. It was a combination of both classes. I couldn't break it down to either class.

Q. You couldn't break it down to either class?

A. No, I couldn't.

Q. Now did he teach both of those classes on the same day?

A. No, he taught one on a Saturday and one on a Sunday morning; the school ended around noon that Sunday.

Q. But you have no idea of what he taught in the first class and what he taught in the second class?

A. I know what his last words were, and to break
1009 down the classes separately, I wouldn't remember.

Q. You told us about his last words.

A. Yes, but I—

Q. You don't remember.

A. I couldn't break it down.

Mr. Parsons: Perhaps I can make a suggestion, if it would help counsel. If he would want to go through the testimony, he might be able to pick out which phase of the statements relate to which class.

Mr. Abt: Thank you for the suggestion, Mr. Parsons, but I will conduct my own examination.

1010 By Mr. Abt:

Q. Now do you recall that one of the classes you attended was a class in "Introduction to Political Economy"?

A. There was something along political economy in the early part of the week.

Q. Who taught that class?

A. Offhand I wouldn't remember.

Q. What were you taught in that class?

A. That I wouldn't remember.

Q. You don't remember.

Were you taught a class on the "National Negro Question"?

A. Yes, there was a class under that.

Q. Who taught that class?

A. Patterson.

Q. What were you taught in that class?

A. It was revolved around the Negro question, and the point I remember was they drew a diagram of three circles, an outer circle of the whites, and a smaller circle of the Jewish and whites, and the Negro was in the center of this, being taken advantage of by these outer two groups.

Q. That is all you remember about that whole class?

1011 A. I would say that is what I remember.

Q. Now did you make reports to the Federal Bureau of Investigation as to what you were taught in these schools?

A. Yes, I made the reports.

Q. You made a report?
A. Yes.
Q. In writing?
A. Yes.
Q. Did you make a report on what Mr. Lightfoot taught you in these classes?
A. I did.
Q. What was the occasion for your leaving the Communist Party?
A. The Taft-Hartley law came into effect whereby union officials were required to sign non-Communist affidavits, and I went to the Communist Party headquarters in Milwaukee, Wisconsin, and told them I was required to sign a non-Communist affidavit, and they said, "Go ahead. We will destroy our records of your membership in the Communist Party."
Mr. Abt: No further cross.
Mr. Parsons: No redirect.
(Witness excused.)
1012 Mr. Parsons: With the exception, your Honor, of certain loose ends resulting from motions pending before your Honor, documents offered by the Government for admission into evidence, and the question that was taken up with your Honor before lunch relative to the F. B. I. reports,—with the exception of those matters which have not been so completed, the Government rests its case.
Mr. Abt: May we approach the bench, your Honor, or are you going to dismiss the jury?
The Court: I am going to have the jury go.
The jury may go. Remember your instructions. You may go until tomorrow morning at ten o'clock.
(Whereupon the jury retired from the court room.)
(The following proceedings were had in open court out of the presence and hearing of the jury:)
The Court: We will go forward with other matters.
Now those matters that I have reserved my ruling on, we will take those up.
Mr. Abt: I have another motion to make, your Honor.
1013 The Court: All right.
Mr. Abt: I now make the same motion with reference to the F.B.I. reports of the last witness on the class taught by Mr. Lightfoot that I did with reference to the reports of the witness Czarnowski, your Honor.

Mr. Parsons: I don't believe it was established, but it is a matter of fact that those reports were made to the F.B.I. in its office in Milwaukee, not to our office. Under those circumstances, of course, our opportunity to produce is removed by the necessity to that extent, the necessity of administrative procedure.

The Court: In other words, you don't have them?

Mr. Parsons: That is correct.

Mr. Abt: The mail still operates between here and Milwaukee.

The Court: Yes.

Mr. Parsons: We don't know whether they exist or not.

Mr. Abt: The witness said that he made written reports, and there is no doubt about their existence.

Mr. Parsons: Otherwise we would rest as we do on the other exhibits.

1014 The Court: All right.

Well, one of the matters before me now is the reports.

So we will know which ones we are talking about, will you have the reporter mark these as Court Exhibits 1, 2 and 3, and then I will have them back.

Mr. Parsons: Incidentally, were any of the prior exhibits marked Court exhibits?

The Court: Not that I know of.

(Court Exhibits 1, 2 and 3 marked for indentification.)

Mr. O'Donnell: I don't think I need to repeat this, your Honor, but I just want to mention again for the record that we do feel that those should not be made available to the defendant as this time.

The Court: I meant to have you give them to the Clerk, and that is why I gave them back to you.

Mr. O'Donnell: For the reasons I have stated, I have been advised that there are certain matters in those reports affecting internal security.

The Court: At the request of counsel for the defendant, certain reports made to the F.B.I. by Stephen Pulaski had been tendered and the Court had them marked as Court Exhibits 1, 2 and 3, and the Court has ex-

1015 amined them. It is quite difficult to know from the reading of the report whether or not there is something in the report that might be harmful to other investigations.

Number two, there isn't any showing here so far that the reason for these reports—I might say that I have read them and I must say by reading them I see no contradiction between the testimony and the reports.

I will exclude the reports and they may be returned to Government counsel.

They may be returned.

1016 Mr. Parsons: Thank you, your Honor.

The Court: Now, what have you?

Mr. Abt: I think there are two motions. The one, my motion to strike out the testimony of the witness Cooper, on which your Honor has reserved the ruling.

The Court: Just what is the import of that?

Mr. Parsons: The import would be establishing the beginning of the connection of the defendant with the Communist Party back as far as 1935, to show he had an opportunity for full knowledge of what the aims and objectives of that Party are.

Mr. Abt: Are you finished, Mr. Parsons?

Mr. Parsons: Yes.

Mr. Abt: The only thing is simply that the testimony of the witness Meyer establishes Mr. Lightfoot was a member of the Communist Party in 1934, one year prior to the testimony of the witness Cooper; and second, the witness Cooper's testimony established nothing about the knowledge of Mr. Lightfoot as to the aims and objectives of the Communist Party of the United

1017 States or as to the aims and objectives of the Communist Party of the United States as an objective fact apart from Mr. Lightfoot's knowledge.

All that testimony establishes is that Mr. Lightfoot went to Moscow, and there he attended some kind of Congress.

I submit, your Honor, the only purpose that testimony can serve is to prejudice the jury, and I submit also that is the only reason it was submitted or offered here.

Mr. Parsons: I should like, for the record, to deny that was the reason for placing that fact in issue. As far as his other remarks are concerned, I should direct myself to the law that is applicable.

I believe the testimony of the witness is to the effect that the Defendant as far back as 1935 was exposed to Communism in its active form, as it was progressing and moving and as it was to be seen by him. Its movement has been connected with the history throughout this en-

tire case as a model by which the advent or rule of this country by the proletariat should be brought about.

1018 I think to that end it is material, as to the knowledge of the Defendant.

1019 Mr. Parsons: As to my intention that it should be entered or introduced in evidence for the purpose of influencing unfairly or prejudicing the defendant, I deny that, and I should like counsel, if he wants to, to—

The Court: You may deny it, but doesn't it have that effect?

Mr. Parsons: My denial, your Honor,—

The Court: Yes. I am not saying you offered it for that purpose, but I think that is the common acceptation here, that Russia and Communism are together. I think that is by the American people.

Now, while the defendant admits he is a Communist yet I can see no probative value at all in that testimony, and it might be highly inflammatory.

Mr. Abt: Again, if the Court please, I should like to direct your attention to the case I brought to your attention in chambers a few days ago, the Konovsky case, which seems to be a clear case in point, your Honor. Assuming that case has no relevancy whatever, and I don't say it hasn't, but assuming it has any relevancy at all it is a remote thing, twenty years ago, and its relevancy is so little in comparison to its inflammatory nature that it seems to me under the doctrine of the Konovsky

1020 case it should be excluded.

Mr. Parsons: I rely upon the more recent case under which—and I refer to the Frankfeld case—

The Court: The what?

Mr. Parsons: The Frankfeld case. That was when we were concerned with the testimony of Mr. Lautner as to how he was expelled from the Party, where the Court said, "If the matter is material to characterize and describe the Party itself the fact it is inflammatory would not make it inadmissible."

The Court: You yourself, as I recall the details of that, did not re-offer that the following morning, is that right, is that correct?

Mr. Parsons: Yes, I believe your ruling was so.

The Court: Before I had ruled. I hadn't ruled definitely. I just asked a few questions and made a few observations on the admissibility, but it was not re-offered in chambers.

Mr. Parsons: That was the effect of poor attorneyship.

The Court: I can't charge it to that at all. On the contrary. Very fine.

I think I will strike out the testimony of the witness Cooper.

1021 Mr. Abt: The only remaining matter, your Honor, is the last motion I made for your inspection, after the production of the F.B.I. report of the witness Brzek—is that his name?

The Court: Yes.

Mr. Abt: For your inspection, your Honor.

The Court: Counsel says they don't have it here. Is that correct?

Mr. Parsons: That is correct.

The Court: That is one thing.

Mr. Abt, there is in neither of those cases, as I view it, any foundation laid at all.

Mr. Abt: I don't believe—that is why I showed it.

The Court: The Mederoff case. I also rely on that. The Court has wide discretion, and in view of the fact counsel says he does not think we have enough so that I can—

Mr. Parsons: I never saw that.

The Court: He says they never have had it, or that they do not now have it here.

Mr. Parsons: No. He did not see it either. And I myself never saw it.

The Court: Your motion will be denied.

That disposes of it.

1022 Mr. Parsons: At this time may the Government offer all the exhibits in evidence?

The Court: We will look at them.

Mr. Parsons: We will submit a full list of those according to the transcript.

The Court: Now I think we have met squarely the point. The Government has rested?

Mr. Parsons: The Government has rested.

Whereupon the Government rested its case in chief.

* * * * *

1102 The Court: In my opinion, those so-called "Communist cases" without referring to the names of them, that I must confess that they have changed it or modified the rules of evidence that I have known anything

about for the last number of years. If that seems to be the law, I will be guided by it.

I think I will reserve my ruling on your motion for acquittal until further order of Court.

You may proceed with your defense after a short recess.

(Whereupon a short recess was taken.)

(The following proceedings were had in open court in the presence and hearing of the jury:)

Mr. Abt: At this time, if your Honor please, I want to offer in evidence a portion of the document that has previously been marked Defendant's Exhibit 3 for identification, which is "History of the Communist Party
1103 of the United States," by William Z. Foster, and I am offering pages 554 through 556.

Mr. Parsons: That Counsel will want to explain the qualification upon which he offers the Exhibit.

The Court: Explain what?

Mr. Parsons: The qualification, the competency of the Exhibit, upon which he offers it.

I don't recall there has been qualification.

Mr. Abt: I call your Honor's attention to the testimony of the witness Czarnowski, which appears at pages 928 and again at 931 of the transcript, which I shall hand to your Honor, if you care to read it.

The Court: I think I recall the testimony, no.

You mean as to this document?

Mr. Abt: As to this statement being an authoritative statement of the position of the Communist Party.

The Court: Do you object to the statement he refers to?

Mr. Parsons: Those pages were exact pages tes-
1104 tified to as to the witness only, as the witness testified only as to certain portions of the book, is that correct?

Mr. Abt: No, he didn't. He testified as to the book.

Do you want me to read the testimony, your Honor?

The Court: No, I think I recall the testimony.

Mr. Abt: He said the book was an authoritative statement—presentation of the position of the Communist Party.

Mr. Parsons: As of that time.

Mr. Abt: As of that time.

The Court: It may be admitted.

That is, that portion of it.

Mr. Abt: Yes, your Honor.

Now if your Honor please, I would like to read to the

Jury a portion of Defendant's Exhibit 22, of the "History of the Communist Party of the Soviet Union".

The Court: You may.

That is that book and the pages that the Govern-
1105 ment had marked in their testimony of it, I take it?

Mr. Abt: The Government offered the entire book, your Honor, and if your Honor recalls, at the time it was offered the understanding was in our affirmative case that we might read passages from the book to the jury.

The Court: But that book was admitted?

Mr. Abt: The book, yes.

Mr. Parsons: The entire book was admitted into evidence?

Mr. Abt: The entire book, yes.

And if you recall, Mr. Parsons, our understand throughout on the offers made by the Government, and I am sure your Honor will recall it, was that we would be privileged, in our affirmative case, to read other passages from the book to the jury.

Mr. Parsons: We have no objections. I don't believe a foundation was laid, but we have no objection.

The Court: All right.

Mr. Abt: Ladies and gentlemen, I want to read to you a rather brief passage from Government's Exhibit 22,

which I am sure you will recall is a book entitled,
1106 "History of the Communist Party of the Soviet Union," and I am reading from page 355 of that book, as follows:

"It may seem that all that is required for mastering the Marxist-Leninist theory is diligently to learn by heart isolated conclusions and propositions from the works of Marx, Engels and Lenin. Learn to quote them at opportune times, and rest at that, in the hope that the conclusions and propositions thus memorized will suit each and every situation and occasion. But such an approach to the Marxist-Leninist theory is altogether wrong. The Marxist-Leninist theory must not be regarded as a collection of dogmas, as a catechism, as a symbol of faith, and the Marxists themselves as pedants and dogmatists. The Marxist-Leninist theory is the science of the development of society, the science of the working class movement, the science of the proletarian revolution, the science

of the building of the Communist society. And as a
1107 science it does not and cannot stand still, but develops and perfects itself. Clearly, in its development it is

bound to become enriched by new experience and new knowledge, and some of its propositions and conclusions are bound to change in the course of time, are bound to be replaced by new conclusions and propositions corresponding to the new historical conditions.

"Mastering the Marxist-Leninist theory means assimilating the substance of this theory and learning to use it in the solution of the practical problem of the revolutionary movement under the varying conditions of the class struggle of the proletariat."

Now just one brief paragraph on page 356:

"Mastering the Marxist-Leninist theory means being able to enrich this theory with the new experience of the revolutionary movement, with new propositions and conclusions, it means being able to develop it and advance
1108 it without hesitating to replace—in accordance with the substance of the theory—such of its propositions and conclusions as have become antiquated by new ones corresponding to the new historical situation."

That is the conclusion of the reading from that book.

Now, if your Honor please, I would like to read a brief paragraph from Government's Exhibit 66, "The Party Forum," April, 1953.

The Court: Proceed.

Mr. Abt: If you will recall, ladies and gentlemen, this Party Forum contains an article entitled, "A Survey of the Discussion in Illinois" by Claude Lightfoot, Executive Secretary, Illinois District.

The Government read a portion of this article to you. I want to read just one brief paragraph from that article, and that paragraph reads as follows:

"Marxism-Leninism gives us the power of orientation. It enables us to perceive the direction in which things
1109 are heading. It does not, nor can it determine, for us beforehand the form, nor the exact time, of a new social development."

Now if your Honor please, I want to read the passage from Mr. Foster's book that I just offered into evidence.

The passage I am going to read, ladies and gentlemen, is from the book his Honor just received in evidence, "History of the Communist Party of the United States," by William Z. Foster, Copyright 1952.

The reading is from pages 554 through 556 of this book:

1110 "It is in line with the foregoing general principles and perspectives that the Communist Party has long proposed the regular election, under the United States Constitution, of a broad coalition government, an American variant of the people's front, made up of the representatives of the political and economic organizations of the workers, the Negro people, small farmers, intellectuals, and other democratic strata, who constitute the great bulk of the American people. In the 1948 election campaign the Communist Party, through its general secretary, Eugene Dennis, stated this political policy as follows: 'For a people's government that will advance the cause of peace, security and democracy! For an anti-imperialist, anti-monopoly government! What is projected in this slogan, it should be made clear, is a political objective that reflects the united front program which is bringing into a broad coalition all the democratic and anti-imperialist forces
1111 including the third party movement.' Despite the dangerous threat of fascism in this country, the Communist Party holds that the workers and their allies could elect such a people's front government under the Constitution by vigorous action.

"Beyond this point, in practical policy, the Communist Party has not planned. But it is clear that such a people's front government would be elected, probably, when the great masses of the people, facing conditions of a serious political crisis, would feel the urgent need of it in order to protect their most vital interests. Such a situation is definitely in the political perspective for the United States, resulting from the deepening of the general crisis of world capitalism, intensified by Wall Street's aggressive drive towards war.

"A people's front government in this country would have as its great task to preserve the workers and the masses of the people from devastating crisis, from
1112 the consequences of the breaking down of capitalism and the reactionary policies of big capital. Its program, therefore, would necessarily involve vigorous measures to maintain or restore world peace, to preserve and extend popular democratic liberties, to keep the industries in operation, to improve radically the living standards of the people, and to realize the economic, political, and social equality of the Negro people, and their right to self-determination in the 'Black Belt' of the South.

"However, standing athwart the war and fascist policies of monopoly capital, such a democratic people's government, both in its election and in its functioning, would have to face a most determined opposition from the monopolists and their Social-Democratic tools. No one who knows the American capitalist class, with its long record of war aggression, brutality in strikes,
1113 slaughter of workers in industry, persecution against the Negro people, etc., can doubt but that the reactionaries would use every available means of Social-Democratic treachery and of outright violence to prevent or destroy any government that cut into their rule and into their robbery of the people. Consequently, the only way the people's government could be elected in the first place and could be enabled to live and to carry out its progressive program would be by defeating this Social-Democratic treachery and capitalist violence. This would also require weakening the economic and political power of the monopolists by the nationalization of the banks, the basic industries, the press, radio, television, etc., and eventually by the reorganization of the army, police, etc., and by beginning to lay the basis for a planned economy. All of which measures the legally elected people's coalition government would have the full authority and na-
1114 tional mandate to carry out. This course would be the path to a people's democracy.

"Failure of a people's government to take such necessary measures would surely result in its downfall and probably bring about the victory of fascism in the United States. It was, for example, the fatal mistake of the pre-war people's government in Spain that it did not, from the outset, proceed to weaken the capitalists basically, as indicated, and did not nip in the bud the potential military rebellion which finally destroyed it. On the other hand, the fulfillment of the above historic tasks by an American people's government would so strengthen the working class and all the forces of socialism, while weakening those of reaction, that a peaceful transition from capitalism to socialism would become possible through a people's democracy, in its American forms.

"The establishment of a people's democracy in the United States would signify that the coalition of
1115 workers and their allies had won a decisive political victory over monopoly capital and that a government

had come into power, committed to the abolition of capitalism and the establishment of socialism. Such a government, made indispensable under the severe pressure of the capitalist crisis, might evolve either from a people's front coalition government through an internal regrouping of forces, or it might be elected by the masses of the American people after the people's front government had served its historic function. In either event the working class and its allies, with the potential power to do so, would carry through their democratic program, curbing all violent and illegal efforts of monopolist reaction to defeat it and to set up a fascist state.

"With the establishment of a Socialist government on the basis of a people's democracy, the American people would logically and necessarily proceed to reorganize
1116 and democratize the state. They would make such constitutional changes as the majority would decide. They would learn from Marx and from their own experience that the workers cannot simply take over the bourgeois state machinery and use it to build socialism. Within the framework of the people's democracy, the American people would gradually construct a higher type of democracy and democratic state, in order to build a socialized economy and to make the people the real rulers of the land. With the workers in power, the path from socialism to the higher stage of communism would be one of gradual and peaceful evolution.

1117 "This, very briefly, is 'the American road to socialism,' on the basis of our country's conditions and of the socialist experience of the workers of the world. But this tentative outline is by no means a blue-print. When the American working class actually starts out to establish socialism, as an imperative necessity under the deepening crisis of capitalism, it will adopt the best, shortest, most fitting routes and forms for the American people. What stands out clearly in this analysis, however, is that, in its perspective for ultimate socialism in the United States, the Communist Party, as the Supreme Court, with a rare exhibition of objectivity, clearly stated in the Schneiderman case of 1942, always strives for a peaceful and democratic course to socialism, supported at all times by a huge majority of the American people. The great toiling masses of our country, as of all others, are funda-

mentally the builders and defenders of peace and
1118 democracy, and this elementary course they will strive to follow in their eventual advance to socialism."

1119 Mr. Crockett: May it please the Court, ladies and gentlemen of the jury:

I want to read to you a few paragraphs from Government Exhibit 45, which is the 1948 Constitution of the Communist Party, and I shall read first the second paragraph of the Preamble of that Constitution:

"The Communist Party upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties. It uncompromisingly fights against imperialism and colonial oppression, against racial, national and religious discrimination, against Jim-Crowism, anti-Semitism and all forms of chauvinism."

Then the paragraph before the last:

"In the struggle for democracy, peace and social progress, the Communist Party carries forward the democratic traditions of Jefferson, Paine, Lincoln and Frederick Douglass, and the great working class traditions
1120 of Sylvis, Debs and Ruthenberg. It fights side by side with all who join in this cause."

Now I turn to Article II, "Purposes."

"The purposes of this organization are to promote the best interests and welfare of the working class and the people of the United States, to defend and extend the democracy of our country, to prevent the rise of fascism, and to advance the cause of progress and peace with the ultimate aim of ridding our country of the scourge of economic crises, unemployment, insecurity, poverty and war, through the realization of the historic aim of the working class—the establishment of Socialism by the free choice of the majority of the American people."

Now I turn to Article VIII, and I shall read Section 3 of that Article:

"Any member shall be expelled from the Party who is found to be a strikebreaker, provocateur, engaged
1121 in espionage, or who advocates force and violence or terrorism, or who adheres to or participates in the activities of any group or party which conspires or acts to subvert, undermine, weaken or overthrow any or all

institutions of American democracy through which the majority of the American people can maintain their right to determine their destinies."

Now I should like—

The Court: One moment, please.

The jury may recess until 2:00 o'clock.

(Whereupon the jury retired from the court room.)

(The following proceedings were had in open court before the bench.)

1122 The Court: I just wanted to know how long you thought you might take.

Mr. Abt: About five more minutes, your Honor. That is why I was trying to catch you in time to keep the jury. We could have concluded this.

The Court: Do you have your instructions?

Mr. Abt: We don't your Honor.

We must ask your indulgence on that, and what I would like to suggest is this: Of course at the close of our case we will make another motion, but I would like to be heard very briefly on it, and as to the schedule, we would like to suggest that we get the instructions to you tomorrow some time, and that the closing arguments go over until Monday.

Mr. Parsons: I think that would be agreeable with the Government. We would want some rebuttal.

The Court: You want what?

Mr. Parsons: We want a few minutes of rebuttal is all.

The Court: You mean on the case in chief?

Mr. Parsons: That is right, and then that would give us some time overnight to get our instructions ready.

1123 Mr. Abt: I may say that on the instructions, your Honor, as a case of first impression, I think there are some tough problems of law, and your Honor is well aware of this, I am sure.

The Court: I don't think there is any doubt about it.

Mr. Abt: You can't pick these instructions out of your sleeve, you have to sit down and think about them.

Mr. Parsons: I agree with counsel and with the Court, I think it is a case of impression, and I think the Court is correct in saying that the law is changing, and we have to sort of find where it is.

The Court: Indeed it has changed.

Mr. Abt: It is not what I was taught in law school, and probably not what you have been used to.

The Court: It is not the way I have practiced it for thirty years.

Mr. Parsons: The cases seem to show that it is.

Incidentally, I wonder if I might ask counsel if he read from the old Schneiderman case? Was that the old Schneiderman case?

Mr. Abt: Of course. His Honor understood that.

1124 It was the only Schneiderman case that went to the Supreme Court.

Judge, I would just like to take up one other thing, and I am reluctant to have to take this up with you again, but in the interest of my client, I think I must.

If you will recall, I raised with you Monday the question of Mr. Parsons' broadcast.

Mr. Parsons: Yes, we have that.

Mr. Abt: Can you give it to me today?

The Court: Give it to him.

Mr. Parsons: All right.

Mr. Abt: It may be that I will have to make a motion on it before we close the case.

Mr. Parsons: Shall we discuss it in your chambers before 2 o'clock?

The Court: I tell you what you do, produce it at 2 o'clock, and I won't bring the jury in until you produce it. You might hand it to him a little while before if you can.

Mr. Abt: Do you have it now? If you have it, we can read it over the lunch hour.

Mr. O'Donnell: It is probably upstairs.

The Court: You have it available?

Mr. O'Donnell: I know we had it, but it has just

1125 been misplaced.

Mr. Parsons: I had no means of getting hold of it. I asked the FBI to get it for me.

The Court: You have it?

Mr. Parsons: Yes, sir.

The Court: If you have it, turn it over to him and let him make what comments he desires to make at 2 o'clock.

Mr. Abt: I may not have any, your Honor, but I haven't read it yet.

The Court: I didn't hear it, as I said, but there was some comment about it to me.

One of the radio broadcasters said that I had found the defendant not guilty.

Mr. Parsons: I hadn't heard that.

The Court: I got a card this morning that said one of the jurors is asleep, and he said, "How can he understand what is going on if he is asleep?" He is dozing every once in a while, you have to wake him up.

Mr. Abt: When do you want those instructions?

The Court: Well, if you think that you can bring them in tomorrow, I will probably suspend early and give you a chance to go over them. Have them here tomorrow.

1126 Mr. Abt: And settle them on Monday?

The Court: No, I would like to settle them on tomorrow, so I would know how long you would want to argue on Monday, and we can see what the situation is.

Mr. Abt: I think we are prepared to give you an estimate on it.

The Court: What is your estimate?

Mr. Abt: Let me ask you first, your Honor, do you have any objection to Mr. Crockett and myself splitting the argument?

The Court: No, no objection.

Mr. Abt: I would like to ask for two hours, which I do not think we will use, but I want that time. It would certainly not be more, and probably rather less.

Mr. Parsons: Well, I believe that, using the rest of the day,—that is, if we go ahead Monday morning, there is about an hour and a half in the morning, and if I complete our opening arguments, that would just about make it.

The Court: I might limit it to less than that, but tomorrow I will let you know.

What I have in mind is that if we don't finish on Monday—I mean, with the arguments, you can make

1127 your opening, and counsel can make half of his closing, if you desire.

Mr. Abt: I'm sorry, maybe I don't understand the procedure. Does the Government open and close?

Mr. Parsons: Yes, we do, in this jurisdiction.

The Court: Off the record.

(Discussion off the record.)

The Court: Come back at 2 o'clock.

(An adjournment was taken until 2:00 o'clock P. M. of this day, Thursday, January 20, 1955.)

1128 Before Hon. Philip L. Sullivan, Judge and a Jury.

Thursday, January 20, 1955,
2:00 o'clock P. M.

Court met pursuant to recess.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government; Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

And thereupon the following further proceedings were had herein:—

1129 Mr. Abt: May we approach the bench, your Honor?

The Court: Very well.

(The following proceedings were had in open court before the bench, in the presence but outside of the hearing of the jury:)

Mr. Abt: If your Honor please, Mr. Parsons has just given me a copy of that broadcast. I don't want to argue the matter at any length, but I would simply like to call attention to two things.

First, in the broadcast Mr. Parsons made reference to the fact that in other cases the Communist Party had been adjudicated to be an organization that advocates the overthrow of the Government by force and violence, and went on to explain why he believed that that adjudication had to be gone over again in this case.

In addition, Mr. Parsons made some comments about Mr. Lightfoot's position in the Party, including the fact that since the first-string Communists' bail has been revoked, Mr. Lightfoot is the only member of the National Committee or alternate member who is at liberty.

Now, if your Honor please, I would like first to have this broadcast marked in evidence as an exhibit.

1130 The Court: It may be marked.

(Whereupon said document was marked Defendant's Exhibit 4 for identification.)

Mr. Abt: Secondly, if your Honor please, on the basis of this broadcast, I should like to make a motion for a mistrial.

The Court: Motion denied.

Though I question the wisdom of the broadcast, I think I will tell the jury if they heard it, that they will disregard it.

Is that all?

Mr. Abt: That is all, your Honor.

The Court: One other thing, now. I struck the testimony of a witness here yesterday.

Mr. Abt: Yes, I was going to call your attention to that, your Honor.

The Court: That was the witness—

Mr. Abt: Cooper.

The Court: I struck the entire testimony.

Mr. Abt: The entire testimony, yes, sir.

The Court: All right.

Mr. Crockett: What about Exhibit 17?

Mr. Abt: Oh, yes, your Honor, we have one other point.

1131 We made a motion to strike Government's Exhibit 17,

Mr. Crockett: "Line of March," I think it was called.

Mr. Abt: "Line of March." Your Honor reserved decision pending any connecting-up with the testimony. There has been no further reference to that exhibit in the entire case, and we therefore believe it should be stricken.

Mr. O'Donnell: It was received in evidence.

Mr. Abt: I am sorry. You didn't reserve decision, you received the exhibit subject to connection, and there has been no connection, and so now at this time we submit it should be stricken.

Mr. Parsons: I had better have Mr. O'Donnell speak about that, because I believe that was on the testimony of Mr. Herron.

Mr. O'Donnell: That is right, that was the "Line of March" introduced through the witness Herron, and with particular reference to several resolutions that had been passed at the convention at which he had attended. That was what had been identified or referred to as the "Re-Constitution Convention of the Communist Party in Illinois", and the evidence showed in this case that

1132 shortly thereafter—or, rather, that the Party was re-constituted and that the defendant when he returned from military service joined the re-constituted Party.

The Court: Is that the exhibit?

Mr. Crockett: No, this is not the exhibit, your Honor.

Mr. O'Donnell: He joined the re-constituted Party in Illinois.

The purpose of this exhibit is to show that the Communist Party in Illinois was re-constituted, that it was the re-constituted Party that the defendant became a member of when he returned from the Armed Services and joined the Party.

Now there is other evidence of re-constitution as well, and it goes to show the nature of the—

The Court: What does this exhibit show?

Mr. O'Donnell: It goes to the nature of the Communist Party and it is proof under the indictment.

In other words, we contend that the Communist Party was re-constituted, re-dedicated to Marxism-Lenin-
1133 ism; that that exhibit tends to prove that fact; that that was done here in Illinois, which substantiates the oral testimony of several witnesses to that effect.

Mr. Crockett: Your Honor stated at pages 84 and 85 of the transcript that you had allowed that exhibit to come in subject to connection, because the Government indicated they would connect it by subsequent witnesses, and you went on to state that if no further connection was shown, a motion to strike would be granted.

There was no subsequent reference to that exhibit by any of the succeeding witnesses, and that is the basis for our motion to strike.

Mr. O'Donnell: We contend there was subsequent connection because they were the resolutions—he testified they were the resolutions passed at that convention and he reviewed and examined the exhibit.

The Court: What relationship has that exhibit to what you are talking about now?

Mr. O'Donnell: It tends to establish the fact of the re-constitution of the Communist Party in Illinois; that is, the return after the Browder period, the CPA period, to the doctrines of Marxism-Leninism.

1134 Mr. Crockett: The evidence indicated that the defendant was not at that convention that Mr. O'Donnell is talking about.

Mr. O'Donnell: That is right.

Mr. Crockett: That is why your Honor insisted on further connection.

Mr. O'Donnell: It goes to the nature of the Party itself.

The Court: Well, I think that is too remote. I will strike it. Is it Exhibit 17?

Mr. Abt: Exhibit 17, yes, your Honor.

1135 (The following proceedings were had in open court in the presence and hearing of the jury.)

The Court: Yesterday, during the absence of the jury the testimony of James E. Cooper who testified here, from some place in Alabama—

Mr. Abt: Birmingham, your Honor.

The Court: No, it wasn't Birmingham, but it was pretty close to it.

Mr. Abt: Yes, it was Birmingham.

The Court: It doesn't make any difference. That testimony was stricken from the record, and you will so disregard it, as you do any other evidence that is stricken.

Now, since this trial started there have been comments by radio, television, and a re-broadcast of certain remarks by the prosecutor in person over the radio, I think.

Did any of you jurors hear that broadcast?

(There was no audible response.)

The Court: Well, if you did hear it or hear anything about it you will disregard it.

As I told you before, the only testimony or evidence you are to consider is what happened right here in open court, no publication, no means of the air or anything

1136 else is to be considered by you, but just the evidence here alone, and the law that is given you by the Court.

Does that suffice, Mr. Abt?

Mr. Abt: Yes.

Mr. Crockett: May it please the Court, ladies and gentlemen, I want to call attention to the contents of Exhibit 16, the Selective Service record of the defendant Claude Lightfoot, which was offered in evidence and received on behalf of the Government here.

I first call attention to Exhibit 16-G, which is the registration card which gives the name of the defendant, states he is a citizen of the United States, that he is married, that he is employed by one Frank Meyer.

I will ask you now, Mr. Parsons, can we stipulate the Frank Meyer referred to is the same Frank Meyer who testified here?

Mr. Parsons: It is so stipulated.

Mr. Crockett: At the bottom it says:

"I affirm I have verified the above answers and they are true,"

and it is signed by Claude Lightfoot.

This registration card is dated October 16,
1137 1940.

Next I would like to call attention to Exhibit 16-A, which is the Selective Service questionnaire of the defendant Claude Lightfoot, and it shows, under the heading "Minutes of Reference by Local Board", this:

"The Local Board classifies the registrant in Class 3," and then later that is changed to "Class 1" by the following:

"Ayes, 2;

"No, 0."

Now, I turn to Government Exhibit 16-D, which is dated January 2, 1942, and reads as follows:

"Local Draft Board No. 85,
"108 East Garfield Boulevard,
"Chicago, Illinois.

"Gentlemen:

"I am writing to you in regards my status as a selectee. I am registered as Claude Lightfoot, No. 507, at your Board. I would like to be reclassified at present. I am classified as 3-A, because of dependents at the time
1138 of my classification. The situation which caused my deferment has changed, and I no longer have dependents. I would like to be reclassified according to the rules governing the procedure.

"Respectfully yours,
"Claude Lightfoot,
"548 East 46th Street."

1139 Mr. Crockett: Now I go back to Government's Exhibit 16-A, and I call attention to the date of this, January 6, 1942, and it says: "Reclassified in Class 1-A, due to statements from registrant stating he no longer had dependents."

Now I turn to Government's Exhibit 16-F, which is the Enlistment Record and the Report of Separation: "Honorable discharge of Claude Lightfoot: Place of Birth—Lake Village, Arkansas."

It shows he was inducted into the United States Army on April 10, 1942, from Chicago, and that he had the following service outside of the U. S.: "Date of Departure—May 1, 1943; Date of Return—November 19, 1945."

He received the following decorations: "The Victory Medal; American Theatre Ribbon; European-African-Eastern Theatre Ribbon; five overseas bars, one service stripe, good conduct medal."

If it please the Court, the Defendant rests.

(Thereupon the Defendant rested his case in chief.)

1140 The Court: Is there any rebuttal?

Mr. Parsons: The Government plans to have rebuttal. May we be heard out of the presence of the jury, your Honor, as to that matter?

The Court: If it is very brief you may step up here.

Mr. Parsons: It may take some time.

The Court: The jury may retire.

(The following proceedings were had in open court, outside the hearing and presence of the jury.)

The Court: All right, Mr. Parsons.

Mr. Parsons: Your Honor, the Government witness we have is not available to us at this moment.

The Court: I beg your pardon?

Mr. Parsons: The Government witness is not available to us at this moment. The speed of this trial, I am sure for your Honor and for counsel on both sides, has been a little faster than any of us had anticipated, particularly within the last two days, and we did not expect it would be necessary to place that rebuttal witness on the stand at this moment. We were unable to have this witness with us during the time we had during the noon hour.

We would therefore want a little time to have that

1141 witness here.

The Court: Did I understand you to say you had him here during the noon hour?

Mr. Parsons: No, we could not have him here during the noon hour.

The problem is this: I don't think the witness will take a great deal of time, and the amount of reading matter the Government will have will not take a great deal of time either.

There is a problem of asking the jury to return tomorrow morning for a short session and put everything in the case that the Government has on Monday before we

make our closing arguments. It is a matter of timing for counsel.

Mr. Abt: I would like to ask Mr. Parsons: How long do you expect the rebuttal will take?

Mr. Parsons: An hour or an hour and a half at the outside.

The Court: This rebuttal, what is the rebuttal?

Mr. Parsons: In the first place, the defense read to the jury from a book by William Z. Foster, certain passages which the Government wants to refute. Those passages appear to show the Communist Party of the United States during the statutory period had changed or at least
1142 at that time it did not advocate the violent overthrow of the Government of the United States, and we believe this witness will be in condition to explain that, in a position to explain that.

1143 Mr. Abt: Is that the sole purpose of the rebuttal?

Mr. Parsons: Yes, that is the purpose.

Mr. Abt: I don't know just how to react. Setting the thing over to Monday, if then an hour or an hour and a half's time with this witness is spent, and then perhaps some cross-examination also, then that will clearly not enable us to get in a full day of argument.

The Court: No.

Mr. Parsons: Of course tomorrow morning we have the matter of our charges to the jury.

The Court: That is correct.

Mr. Parsons: Which will take perhaps the entire morning.

The Court: I will determine that to some extent, whether it will take the entire morning.

Mr. Parsons: Yes.

Mr. Abt: I had hoped we would have until noon tomorrow to get these instructions out.

The Court: I plan on it, too.

Mr. Abt: Beg pardon?

The Court: I plan on it, too, but I cannot understand on rebuttal on that point how you expect to take an hour and a half, any more than I thought you anticipated
1144 it would take six to eight weeks to put in the Government's case.

Mr. Parsons: For the record, I would like personally to go on record that it was my impression the entire trial would take six or eight weeks, and if I left that impression with the Court I would like to erase it.

The Court: It is really of no consequence. I just want the trial to continue, not go in piecemeal.

Mr. Parsons: That is true.

The Court: When will the witness be available?

Mr. Parsons: At the earliest time tomorrow afternoon.

The Court: You see, if it is an hour and a half, that will run over into Monday, and you won't get started with the argument then until Tuesday.

Mr. Parsons: Tomorrow morning if we are through with all other matters we should be able to use that entire two hour session.

Mr. Abt: Your Honor, I would like to call attention to something that just occurred to me, that is, to suggest this is not proper rebuttal, for the following reason:

When the witness Lautner was on the stand I asked him to identify the book, and I called his attention
1145 to the particular passage of the book in which we were interested, and I am sure your Honor recalls that.

Again, I had the witness Czarnowski identify the book, so there was no doubt of our purpose in offering the book and, indeed, the production of the book and our questioning of their witness on their case in chief in reference to the book opened up to them on redirect the possibility of bringing out anything they wanted to in that book or to call an additional witness in their case in chief to testify about the book.

The book was tendered during their case, your Honor, and I submit under those circumstances, since they could have produced any testimony they wanted to about that book during their case in chief it is improper for them to introduce evidence by a witness on rebuttal. There is no purpose for it.

We might have the opportunity then of asking, and we might ask for surrebuttal to rebut what their witness says.

1146 Mr. Abt: It would be quite different if they had been taken by surprise, if the books had gone in for the first time in our direct testimony.

Your Honor will recall the only reason the books didn't go in was since under your rules here in Illinois, which are different from ours in New York, we couldn't put it in during their case, but I questioned and I question now very seriously whether this is proper rebuttal.

The Court: You had the opportunity of taking that book and asking any witness you cared to about that book.

Mr. Parsons: That book was not qualified for entry into evidence on the Government's case.

The Court: I beg your pardon?

Mr. Parsons: That book was not qualified for entry into evidence on the Government's case.

This morning when counsel tendered the book and offered it into evidence on the testimony of the Government witness, and I conceded it had been so qualified, it was on the representation that it had been qualified by the Government's witness.

A review of the record, of the transcript in this
1147 case, and the pages of that transcript—

Mr. Abt: You are looking at the wrong transcript, Mr. Parsons. I qualified it.

Mr. Parsons: On the testimony of Mr. Czarnowski the transcript will reveal it was not testified that this was an authoritative book.

Mr. Abt: Mr. Parsons, he testified to that on redirect. You have got the wrong page. Page 931.

"And you stated that you were told it is an authoritative— (Addressing Mr. Abt)— what is your phrase, Mr. Abt?

"Mr. Abt: It is yours, while you are phrasing, Mr. Parsons.

"Q. (Continuing.) —authoritative document on the Communist Party in the United States, is that right?

"A. Yes, sir."

The Court: Yes, sir, I remember it.

Mr. Parsons: The other question is, your Honor:

"And you stated you were told—" It is not that it was. The thing is that he was told it was an authoritative document in the United States.

Mr. Abt: You brought that out.

1148 Mr. Parsons: I limited the amount of testimony the witness had given on cross-examination to the fact he had been told that by counsel himself when the witness was on the witness stand.

The Court: I don't think a witness now, on rebuttal, has the right to testify on rebuttal to that book.

Mr. Parsons: Your Honor, the defendant entered that book into evidence as a defendant's exhibit.

The Court: I don't care. He identified it, and you had a right on redirect to go into it. You had the right.

Mr. Parsons: It was identified on cross-examination in the Government's case, your Honor.

The Court: Correct.

Mr. Parsons: At that time the Government was not placing that book into evidence. It was not relying on that book and it had nothing to do with it. The defendant thereafter, relying on the identifying of the book by the Government's witness, then tendered it in evidence and read from it.

Does the Court insist that the Government should place the book in evidence?

The Court: No, I insist you have the right, after it was once identified and after the statement by the wit-
1149 ness on the stand, you had the right to go into it with the witness on the stand, which you did not do.

Mr. Parsons: We had not had the witness on the stand.

The Court: There was no showing to that effect.

Mr. Parsons: How can we do it? When a book is not yet in evidence how can we do it?

The Court: That wouldn't make any difference. You had the right to, after the witness had identified it, as I told you before in this trial and have told counsel, you had the right to ask questions about the book.

Mr. Parsons: The Government's position is, I believe, clear. This is a book, whether it was identified by the witness as part of the defendant's case or not, it was not obligatory upon the Government to put it in or put anyone on the stand to refute what it might anticipate the defendant would read from the book.

After the Government had rested the defendant then tenders into evidence a book wihch he had merely identified by a statement from the Government's witness, that he had seen it and read several passages from it. It
1150 was entered into evidence, and thereupon he began reading sections and portions from that book.

The Court: That's right.

Mr. Parsons: Sections which he felt upheld his case.

The Court: You had the right, and I will permit you to read any portions of that book.

Mr. Parsons: At the same time may I not have the opportunity to place the witness on the stand to testify as to what that book constitutes and how it came to be

written, the fact that the book is actually a camouflage of the actual teachings, and why it was written was because it was written during the trial of the Dennis case?

Mr. Abt: I object to that, Counsel.

Mr. Parsons: The jury is not in the room.

Mr. Abt: Whether the jury is in the room or not.

Mr. Parsons: We are making an offer of proof. We want the Judge to know what we intend to prove by this witness.

Mr. Abt: As I understand it, the issue is whether this book does or does not represent an authoritative statement of the Communist Party's position. That book was tendered.

Mr. Parsons: The Government's tender—

1151 The Court: Wait. It was tendered.

Mr. Abt: It was tendered to us by examination of the witness by counsel.

1152 The only issue, as I understand it, that Mr. Parsons wants to offer rebuttal on, is to rebut that testimony.

Now he had ample opportunity to rebut that testimony in his case in chief, your Honor.

He was on notice, not only on notice, his own witness testified it was authoritative. He could have done two things, your Honor:

He could have further done something on redirect with that witness, or he could have brought to the stand in his case in chief a witness whom he now wants to bring to testify, that the thing was camouflaged, wasn't authoritative, whatever that witness wanted to say.

But I submit that the issue, having been raised, and the Government being on notice of the issue during their case in chief, that it is utterly improper rebuttal.

Mr. Parsons: The Government does not propose to contradict the testimony of that witness, but to explain more about that book and to explain how it came about from the lips of a witness who is other than that wit-

1153 ness who was on the stand, who knew nothing about it, who could not have testified to that fact.

Mr. Abt: All during their case in chief he knew that.

The Court: I will permit you to read from the book, but as to delaying the trial for the purpose of bringing in a witness, that will be denied.

Mr. Parsons: For the purpose of the record, your

Honor, I make the motion that the reading from the book, William Z. Foster's book, the "History of the Communist Party of the United States," by the defense, and all reference—

The Court: By the what?

Mr. Parsons: By the defense in the course of the defense and all reference to the book, on the basis of its not having been properly qualified for entry into evidence in this case, and on the basis of the Government having acquiesced on that book in a misapprehension of the facts, be stricken from the record.

The Court: Any remarks?

Mr. Abt: Do you want to hear from me, your Honor?

1154 The Court: No, I don't think so.

Mr. Abt: I rely on the record, your Honor, as to the qualifications of the book.

The Court: Denied.

Mr. O'Donnell: Your Honor, could we have just a moment?

Mr. Parsons: The Government is ready to proceed, your Honor.

The Court: Bring in the jury.

Do you think you are going to be long on rebuttal?

Mr. Parsons: No, your Honor, just a few minutes.

The Court: After, you are going to bring in your instructions tomorrow morning? I want to discuss those.

Mr. Abt: Yes, your Honor.

Mr. Parsons: Yes, sir.

The Court: Do you want the jury to go until Monday morning?

Mr. Parsons: That is our understanding.

Mr. Abt: Yes, sir.

I would like to add, your Honor, after rebuttal I have the usual motions to be made, and I would like to

1155 be heard for about five minutes on it.

The Court: Yes, that is all right.

Bring in the jury.

(The following proceedings were had in open court in the presence and hearing of the jury:)

The Court: Proceed, Mr. Parsons.

Mr. Parsons: Ladies and gentlemen of the jury:

I shall read to you from Defendant's Exhibit 3 in evidence, the "History of the Communist Party of the United

States," by William Z. Foster, from which Mr. Abt read to you this morning, from page 415 of the same volume. It reads as follows:

1156 "The Communist Party of the United States, as we have seen in the course of this history, owes a great debt to the Comintern for its own Marxist-Leninist development. In meeting the difficult post-war problems it has seriously felt the loss of its one-time direct contact with the world's best Marxists through that organization.

"Above we have dealt in passing with some of Browder's developing deviations. But these were only the beginning of a veritable system of distorting Marxism-Leninism. While Browder was in prison, the Communist Party correctly called for national unity of the anti-Hitler forces to prosecute the war. But Browder later proceeded to give this sound policy a highly opportunistic orientation. He interpreted national unity as 'uniting the entire nation, including the biggest capitalists, for a complete and all-out drive for victory.' This all-inclusive conception of national unity attempted to ignore the basic fact that the 'biggest capitalists,' following a course dictated by
1157 their own imperialist interests, had nothing politically in common with the masses of the American people, who were fighting to destroy Hitlerism. Instead of uniting with such reactionaries in order to have a sound war policy, it was necessary for the great masses of the people to organize and fight against them."

And on page 417:

"Browder's false conception of national unity deeply cut down the leading political role of the Communist Party. It would have been of great advantage to our Party, as well as to the labor movement in general, had the Communists more clearly exposed the imperialist policy of big capital during the war, in contrast to the democratic line of the workers, and also had the Party made a real fight for effective political recognition of the workers in the conduct of the war. Browder's opportunism denied the Party both of these vital war-time issues."

1158 And from page 521 of the same volume:

"The government's attack against the Communist Party confronts it with many urgent tasks. It must learn how, under increasingly difficult conditions, to develop its united front policy in the broad peace movement, in the economic struggle, in the fight of the Negro people, and

in the growing mass movement against the Smith Act and other phases of fascist development. Especially the Party will have to become skilled in defending its members and organizations, and it must intensify its vigilance to protect itself from provacateurs and stool-pigeons. As never before, the Party must vigorously practice self-criticism and fight every manifestation of bureaucracy. The Party must also be keenly aware of liquidationist dangers, from both right and left. Above all, the Party must strengthen its grasp of Marxism-Leninism. And whatever the difficulties, the Party must persevere in its tireless efforts to win and maintain a completely open existence."

1159 Will you excuse me, please, your Honor.

I read now from Government's Exhibit 45, which is the Constitution of the Communist Party, of 1948, Government's Exhibit 45, from which the defense read this morning, beginning—their having begun with the second paragraph, I read the first paragraph, page 3, "Preamble", part of which is as follows:

"The Communist Party of the United States is a political party of the American working class, basing itself upon the principles of scientific socialism, Marxism-Leninism."

From page 8 of the same document, Section 3 of Article IV:

"Party members disagreeing with any decision of a Club, Section, County, State or District Committee have the right to appeal such decision to the next higher body until they reach the National Committee and the National Convention. Decisions of the National Convention are final. While the appeal is pending, members shall adhere to the decision already rendered. All appeals should

1160 be heard by the respective committee within 30 days."

Section 8, on page 9:

"A Party member shall have the right to prefer charges against any other member of the organization in accord with Article VIII, Section 6. Any member who has been subject to disciplinary action has the right to appeal to the next higher body up to the National Convention. Appeals to the National Convention shall be heard by a Committee established for such purposes by the Convention."

And Section 10:

"All members shall strive to acquire an understanding of the fundamentals of Marxism, to explain the policies of

the Party and the principles of Socialism, and to apply Communist consciousness, understanding, responsibility and initiative in their work and activity."

1161 One final reading, your Honor, Government Exhibit 19, "Foundations of Leninism," by Josef Stalin, page 90, which reads as follows:

"Strategy is the determination—"

Mr. Abt: Mr. Parsons, will you state when the book was written, to the jury?

Mr. O'Donnell: It is already in the record, your Honor.

Mr. Abt: It is there in the record, but I am sure the jury doesn't recall it.

The Court: I didn't hear you.

Mr. Abt: I asked Mr. Parsons to advise the jury when the book was written.

The Court: It shows there, doesn't it?

Mr. Parsons: May I advise the jury that regardless of when it was written, it has probative value as of today?

The Court: That is what I gather you are offering it for.

Mr. Parsons: I am offering it for the probative value.

The Court: You have already stated that, but it is your position that it doesn't make any difference when it was written?

1162 Mr. Parsons: That is right, your Honor.

The Court: Go ahead, but state when it was written.

Mr. Parsons: I am going to have to rely upon Counsel for that information. I see that it was published and copyrighted in 1939.

Mr. Abt: I am sure it is in here.

It is in the very beginning of the book?

"Note: This book contains a series of lectures delivered at the Sverdlov University, Moscow, in the beginning of April, 1924."

Mr. Parsons: "Strategy is the determination of the direction of the main blow of the proletariat at a given stage of the revolution, the elaboration of a corresponding plan for the disposition of the revolutionary forces (the main and secondary reserves), the fight to carry out this plan throughout the given stage of the revolution."

And the final paragraph on page 91:

1163 "Strategy deals with the main forces of the revolution and their reserves. It changes with the pass-

ing of the revolution from one stage to another, but remains essentially unchanged throughout a given stage."

And page 93 of the same volume, the final paragraph:

"Tactics deal with the forms of struggle and the forms of organization of the proletariat, with their changes and combinations. During a given stage of the revolution tactics may change several times, depending on the flow and ebb, the rise and decline, of the revolution."

May it please the Court, with the exception of our request for leave to offer the rebuttal witness, which request we made once before, we have completed our rebuttal.

The Court: The government rests?

1164 Mr. Parsons: With the exception, of course, of our request for leave to present that rebuttal witness.

The Court: And that is denied; but you rest now?

Mr. Parsons: Other than that we rest.

(Whereupon the Government rested.)

Mr. Abt: The defense rests, your Honor.

The Court: Both sides rest?

Mr. Abt: Yes.

The Court: Ladies and gentlemen, we have other matters to take up which you are not concerned with at this particular time, and tomorrow, and so by agreement of both sides, and the Court as well, you may go until ten o'clock on Monday morning.

I admonish and instruct you again not to discuss this case with anyone, and not to permit anyone to talk to you about it, and not to be guided by television, radio or publications. On three or four different occasions I admonished you that this case is to be decided on what took place in this courtroom and nowhere else.

1165 (The following proceedings were had in open court out of the presence and hearing of the jury:)

Mr. Abt: Your Honor, I have a motion for judgment of acquittal and a motion for a directed verdict at the close of the Government's case,—the close of the whole case, I should say, and I should like to be heard, but only briefly, your Honor.

The Court: All right.

Mr. Abt: Because most all of what I have to say I have already said this morning.

First, your Honor, I want to call attention to the fact that if this trial resolves itself into a battle of books, if the issue here is what the Communist Party taught and

advocated during the statutory three year period, then, as a result of our offer in our case of the passage from Mr. Foster's book, it is clear that the only evidence, your Honor, and I emphasize that, the only evidence in this proceeding as to what the Communist Party taught and advocated within that three year period with reference to the question of the transition to Socialism is contained in the extract which I read to the jury this morning, and that extract, your Honor, makes it perfectly apparent
1166 that within the three year period, the Communist Party taught and advocated a peaceful transition to Socialism, taught and advocated the desirability and, indeed, the necessity of such a peaceful transition, and stated that the transition would be of other than a peaceful character only if those in power employed violence to prevent the majority of the people from obtaining their will in a peaceful way.

I submit, your Honor, that on that state of the record, no reasonable man could come to the conclusion, No. 1, that the Communist Party taught and advocated the forceful overthrow of the Government during the indictment period, or surely that during that period Mr. Lightfoot had knowledge that the Communist Party taught and advocated the violent overthrow of the Government, or intended the violent overthrow of the Government.

Now, your Honor, as I pointed out this morning, Mr. Parsons flees from the record in this case and bases himself entirely on the record and decisions in the Smith Act conspiracy cases.

Those cases, as your Honor knows, arose under indictments embracing an entirely different section of this law, a section which makes it a crime to engage in the conspiracy to teach and advocate the violent over-
1167 throw of the Government, and I submit, your Honor, that the law made in those cases is applicable only to those cases and to that section of the statute.

I would like to point out to your Honor, however, that even in the conspiracy cases, and I refer specifically to the case of "United States v. Flynn," your Honor, which was tried by Judge Dimock in New York, that Judge Dimock directed a judgment of acquittal as to two of the defendants on the grounds that the only evidence with reference to those two defendants was of the fact that they held membership in and attended the meetings of the Communist Party.

Judge Dimock based his judgment of acquittal on the fact that under Section 4(f) of the McCarran Act that was an insufficient showing.

So that even in a conspiracy case, your Honor, under those circumstances a judgment of acquittal has been granted, as I say, in a case of two defendants.

1168 There is no more showing than that, in this case.

More than that, as I say, the law in the conspiracy cases was made in the conspiracy cases, and made under a different section of the Act. This trial is not under that section, this trial is under an untried Section of the Smith Act, the membership section, and your Honor, I submit that in this case, which is a case without precedent, you can write on a clean slate.

I suggest, your Honor, that the only guideposts for you in the writing you put on that slate are, first, the rules of evidence as you have known and applied them all your life; second, Section 4-(f) of the McCarran Act,—without elaborating on that, as your Honor is fully familiar with it—and, third, the Constitution of the United States.

Now, true, your Honor, Mr. Lightfoot is a Communist and Communists in this beloved America of ours today occupy an unpopular and uneasy seat; but, your Honor, if the rules of law that I was taught to revere and that you have lived your life by are no longer available to protect the rights of Communists, then, your Honor,

1169 they are no longer available to protect the rights of any American.

I am standing here, your Honor, pleading for the liberty of my clients; but I think, your Honor, that I am standing here to plead for something much more important,—important though the liberty of my client is—I am pleading, your Honor, for liberty under law for all of us, and that, your Honor, I think is the issue tendered in this case on this record and nothing less than that.

I urge you only, your Honor, to decide that issue on the law as you have applied it in a very long and very honorable career on this bench.

Thank you, sir.

The Court: Mr. Parsons, do you care to make any reply?

Mr. Parsons: Only, your Honor, that on the issue of the Foster book, which was brought up by Counsel, Counsel's statements, of course, must face the fact that the

testimony of the book itself, which was read by myself just awhile ago, repudiates the inference Counsel draws from the readings which he gave to the jury.

The Court: You say the sections you read do
1170 repudiate what he read this morning?

Mr. Parsons: That is right, and the constitution of the Communist Party repudiates it, so that I feel that that issue need not be taken further.

As for the two men who were dismissed from the case by Judge Dimock, they were charged as part of a conspiracy, and when they were not linked up with the conspiracy, the Court could not rightly hold that they were thereupon guilty of the third section of the Act, when they had not been indicted for the third section.

I believe that the Government has proved its case; it has proved that the advocacy of the Communist Party, the doctrine of Marxism-Leninism has not changed throughout these years, and it exists even now and through the statutory period as it did then; advocacy of overthrow of existing governments, including the government of the United States by forceful and violent means.

The Government has proved that the Defendant was a member of that Party and that he knew what that advocacy was.

The Court: By virtue of his membership?

1171 Mr. Parsons: By virtue of many elements of proof which the Government placed into evidence, by virtue of his having taught the doctrines and the advocacy.

The Court: Well, all that goes with membership.

Mr. Parsons: All that goes with membership and with active leadership in the Party.

The Court: Well, most of the Government's evidence, Mr. Parsons, as here produced, is documentary?

Mr. Parsons: And testimonial, your Honor; primarily documentary, but we have a great deal of testimony in evidence on which we rely.

The Court: In what respect?

Mr. Parsons: You mean the evidence—

The Court: That is, to link this Defendant.

Mr. Parsons: We have testimony of what he himself said, your Honor. The last witness the Government presented yesterday was direct testimony of his statements. Of course there is testimony of his writings, too, that is

true; there is indeed evidence of that. There is also
1172 testimony of the teachings and objectives of the Party, and there is, of course, documentary evidence as to what those teachings are.
1173 I hadn't intended to review it thoroughly and go into the entire brief.

The Court: I didn't expect you to.

Do you have anything further?

Mr. Parsons: No.

The Court: I will take this motion of acquittal under further advisement and further order of Court.

Mr. Abt: What time do you want those requested charges, your Honor?

The Court: Ten o'clock tomorrow, or at 10:15, perhaps, by the time I get through with my motions.

Mr. Abt: Would it be possible to make it a little later in the morning? I am thinking in terms of the hour this afternoon and the job that lies ahead of us. Could we make it?

I don't want to inconvenience you, but—

The Court: You are not inconveniencing me, but I want to get this case under way.

Mr. Abt: No, I am just suggesting that.

The Court: Make it 10:30.

Mr. Abt: Judge, before you leave the bench, is it necessary for Mr. Lightfoot to be here tomorrow? Do you want him here?

The Court: Not unless the prosecution wants him.

1174 Mr. Abt: The Government says they have no objection to his absence.

The Court: He may be excused, but he is to remain in the jurisdiction.

Mr. Abt: Oh, yes, of course. He has to go and get an x-ray tomorrow.

The Court: Mr. Marshal, this case will be adjourned until 10:30 tomorrow.

(Whereupon an adjournment was taken of the above-entitled cause at 3:10 p.m. to the following day, Friday, January 21, 1955, at 10:30 o'clock a.m.)

1175 Before Hon. Philip L. Sullivan, Judge, and a Jury.
Friday, January 21, 1955,
10:30 o'clock a.m.

Court met pursuant to adjournment.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government;

Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

1176 (The following proceedings were had in open court, outside the presence of the jury:)

Mr. Parsons: May we have just one moment more, your Honor?

The Court: Mr. Parsons has said they would like just another minute.

Mr. Abt: Right.

(Discussion off the record.)

The Court: Do you have a copy of your instructions now?

Mr. Abt: Yes, I do, your Honor.

Judge, I don't know whether you care to have it or not, or whether it would be of any use to you, but we have prepared a digest of the transcript for our own use, with transcript page references. If you care to have a copy, we have it.

Mr. Parsons: We have prepared a copy of the same thing, your Honor.

The Court: I will have one. The Reporter has given me the transcript for over the week-end.

I will say this, gentlemen: I will not comment on the evidence. There are only a few cases where I ever

1177 have, and that is very rare, because in my opinion it is very important not to let inflection of the voice or any error indicate to the jury my feeling, one way or the other, and I haven't. So therefore I won't.

You know what our reviewing Court said some time ago, that a handful of voluminous instructions can be disregarded in toto.

Mr. Parsons: I have heard the Court had said that, your Honor. That is why we limited our instructions.

The Court: You mean you limited yours?

Mr. Parsons: We limited ours.

The Court: How many, twenty-six or twenty-eight?

Mr. Parsons: The number, or the letter, "R" in the alphabet. I would have to count down. My ABCs are a little slow this morning. I think there are about twenty.

Mr. Abt: I think, frankly, Judge, if we had more time we might have been able to combine or boil down the instructions, but when you are working fast you can't do it.

Mr. Parsons: We didn't include any general instructions, knowing that the Court would take care of
1178 that.

The Court: That's right. I will instruct them.

1179 Mr. Parsons: The Court has all the regular instructions.

The Court: You haven't seen each other's?

Mr. Abt: No, your Honor. We just exchanged them a moment ago.

The Court: I think I will recess then until 11:15 to give you an opportunity to look at them.

Mr. Parsons: That would be very kind of your Honor.

(Whereupon a recess was taken after which the following proceedings were had:)

The Court: Now we will take up the Government's instructions, and you can note any objection.

Mr. Abt: I regret to say, your Honor, we have objections to almost every instruction the Government offers.

On the first instruction we don't believe you should charge the jury on sections of the Smith Act not involved in this case.

The Court: On what?

Mr. Abt: The only section of the Smith Act involved in this case is the very last paragraph, and none of the other paragraphs here have anything to do with the indictment. That, of course, would require your Honor
1180 to indicate that any such United States Government—

Mr. Parsons: All right: I will accept that. The only reason I set out the entire statute was there was nothing in the wording of the third paragraph, and there would have to be.

The Court: What do you claim?

Mr. Parsons: Whoever organizes or helps organize or

teaches or advocates the overthrow of any such government. We would have to place "Any such of the United States."

That is up farther in the statute, and unless we add the phrase then this third paragraph would be incomplete. Counsel has explained that.

The Court: You will revise it?

Mr. Parsons: Oh, yes, we will.

Mr. Abt: There are two typographical errors; "or" instead of "of" and "society" should be added.

Mr. Parsons: Thank you.

In respect to the next instruction, which merely is the indictment—

The Court: What number?

Mr. Parsons: "B".

The Court: What?

Mr. Parsons: "B".

Mr. Abt. Yes.

1181 The Court: I think I gave you that.

Mr. Parsons: I believe you gave me the defendant's.

The Court: Yes.

Mr. Abt. The word "this" in the seventh line from the bottom should be "the Communist Party."

Mr. Parsons: That is all right.

Mr. Abt: All right.

The Court: That is "B", is it?

Mr. Abt: Yes, "B", your Honor.

1182 The Court: What connection?

Mr. Parsons: Where it says "this."

Mr. Abt: Where it says "this Communist Party."

Mr. Parsons: I will accept that.

Mr. Abt: The last seventh or the eight line. It is just a typographical error.

Mr. Parsons: I will accept that correction.

Mr. Abt: All right.

The Court: Oh, yes. All right.

Mr. Abt: Now, we have "C," your Honor, which raises a whole series of questions. One is a basic issue between the government and ourselves as to the meaning of the statute, and here the government attempts to interpret, because it says "beyond reasonable doubt" that "the Communist Party of the United States was an organization which taught and advocated—"

Now, that is not the language of the statute and it is not the language of the indictment. We of course contend certain consequences flow from the language of the statute and the indictment. We ask that, and it seems to me we should not interpret that indictment here.

1183 Mr. Parsons: In this particular one, Counsel and I can fight this out on another instruction, but it is quite conceivable that the government is not quoting the words of the statute. We won't quarrel with him.

Mr. Abt: Just a moment. I have another. I think it will require a full revision. It leaves out "as soon as circumstances will permit."

Mr. Parsons: We will accept that in accordance with the literal language of the statute, and won't depart from it.

Mr. Abt: That is also said here, "during the membership it was the aim of the Communist Party," and that is not in it.

Mr. Parsons: It is a brief phrasing that we placed in the indictment.

Mr. Abt: It isn't.

Mr. Parsons: We will be very glad to delete that.

The Court: Yes, I think it should be.

Mr. Parsons: Well, we will delete that.

1184 Mr. Abt: On "D", first, "before you find the Defendant guilty"—

The Court: Before what?

Mr. Abt: The first place it says, "before you find the Defendant guilty"—and obviously it should be "before you can find the Defendant guilty."

Mr. Parsons: That is all right.

Mr. Abt: I have the same objection as to the previous one, "an organization which taught," its aims and purposes, and again, it seems to me the charge must be in the language of the indictment and not an interpretation of that indictment.

Mr. Parsons: We will concede that.

Mr. Abt: I have one more on the same instruction.

The Court: All right.

Mr. Abt: I am sorry to have so many objections, but there it is.

In the last paragraph it says, "You are at liberty" to consider such "evidence of such intent and at liberty to find on the basis of all that evidence."

Mr. Parsons: That should be "the evidence."

Mr. Abt: It should be "the evidence."

1185 Mr. Parsons: That is right.

Mr. Abt: Do you see it, your Honor?

Mr. Parsons: It is the next to the last line.

Mr. Abt: Will you hold it just a minute, your Honor? Mr. Crockett called my attention to something.

Yes, I think there is a further point here of substance. That is, that the jury can't find knowledge on the basis of all the evidence, because some of the evidence, and indeed much of it, is to matters with reference to which Mr. Lightfoot had no knowledge.

They can only find knowledge on the basis of acts of Mr. Lightfoot or others that are within his knowledge.

We have a specific instruction on that.

Mr. Parsons: I think the jury should be free to consider all the evidence before that. It is never limited. They should consider all the evidence before them.

The Court: Yes, I will give that.

1186 Mr. Abt: Will you note an objection to that?

The Court: You have noted it. It is in the record.

Mr. Abt: I would like for the record, where we finally do not come to an agreement, to show that.

The Court: It is.

Mr. Abt: It is in the record, I understand.

1187 The Court: Now, "G."

Mr. Abt: Again it is the same point. It is not the aims and objectives of the Party, but the teachings and advocacy of the persons; the same point I made on the previous one, your Honor.

Mr. Parsons: Suppose we—

Mr. Abt: Just a moment.

In addition to that the issue here is not objectively what the teachings of the organization were, but Lightfoot's knowledge of those teachings.

In other words, the issue for the jury is not what the organization taught, but whether Lightfoot knew that to be proscribed advocacy.

Mr. Parsons: Let me review this language.

From all this language, I believe where it says, "you believe beyond a reasonable doubt one of the aims 'of the Party was' the overthrow of the Government by force and violence you may so find."

Mr. Abt: May I make a suggestion, Mr. Parsons?

Mr. Parsons: Yes.

Mr. Abt: I would revise it.

"If from all the evidence you believe beyond reasonable doubt the defendant knew the Communist Party to be a group of persons who advocate the overthrow of the Government as soon as circumstances permit, you
1188 will find irrespective of Lightfoot's knowledge of these specific words."

Mr. Parsons: It was our purpose there not to consider the question of his knowledge in this particular instruction, but to consider the question of the proof of the aims and objectives of the Party.

1189 If we can revise the language "you may so find". I believe it would reflect a much more careful consideration. The jury does not find that, so if we revise it to "you may consider" I believe that would be better.

Mr. Abt: I wish our position would be clear, that that is the very thing which underlies our whole basic position here. That is, as I think your Honor understands, the question as to whether or not the members of the Communist Party advocate the proscribed doctrine, which is not before the jury.

The only question before the jury is Lightfoot's knowledge as to whether or not they do advocate the proscribed doctrine.

Mr. Parsons: I have to disagree with Mr. Abt in one more important fact.

The jury has more than this. The jury has also the question of what the Communist Party's aims and objectives are, and I think they must consider that, too.

We want an instruction on that.

I think it is a very careful instruction, except we did not use the word "find" because it is not really the final thing, but we should use the word "consider" and
1190 we shall revise it to say, "if from all the evidence you believe beyond reasonable doubt one of the aims of the Communist Party was the overthrow of the Government by force and violence you may consider that."

Irrespective of the use of the words "by the Communist Party or by any of its members or by the defendant."

Mr. Abt: It is still objectionable on all grounds I have indicated.

First, it is a misstatement of the indictment. Beyond that, I want our position to be absolutely clear on the record.

Mr. Parsons: The thing is—

Mr. Abt: May I finish?

Mr. Parsons: I am so sorry.

Mr. Abt: I want our position to be absolutely clear on the record, that the teachings and advocacy of the Communist Party per se are not before this jury. The only question before this jury is the question of Mr. Lightfoot's knowledge, and our position is there would not be any charge on the character and teachings per se of the Communist Party.

The Court: Is that not a fact?

Mr. Parsons: That is what I was going to ask
1191 counsel, his knowledge of what?

His knowledge of the aims and objectives. The jury must know what the aims and objectives are and must consider them.

1192 Mr. Parsons: In order to determine the question and the problem we had in mind earlier, would the jury be making the mistake of listening for the words by Mr. Lightfoot, the exact words, "overthrow of the United States government by force and violence" and then after finding he himself did not use those exact words, say that was not the object of the Communist Party or the Defendant, just because he did not use those particular exact words, just because the statute uses the words and it seems to me they are not therefore because of the use of the statute of those particular words, they are not words of art which must therefore be spoken or found that they were spoken in the language of the Defendant.

Mr. Abt: I have no objection to that, but my basic objection which we have heard throughout this case, and it is nothing new, that no evidence is admissible here as to the teachings and advocacies except such teachings and advocacies as are brought to the knowledge of Mr. Lightfoot. That is the only issue here, and there should
1193 be no other issue in regard to the teachings and advocacies, except to the teachings and advocacies as Mr. Lightfoot's knowledge of them.

The Court: I think that is right.

Mr. Parsons: Suppose we strike the sentence. It is only the last sentence, and that is where Mr. Abt and I do disagree The first does set it out.

The Court: You mean deciding whether—

Mr. Parsons: Yes, if from all the evidence you believe, your Honor.

Mr. Abt: It is still no good.

Mr. Parsons: That would leave the first sentence about the overthrow of government by force and violence.

The Court: Which one are you referring to now?

Mr. Parsons: We have "E".

The Court: You passed up "G"?

Mr. Parsons: I hadn't gotten there yet.

Mr. Abt: It is "E", now, your Honor.

The Court: I see.

Mr. Parsons: I am so sorry. I am sure we must have had it out of order.

1194 The Court: What do you say about that?

Mr. Parsons: We are in disagreement on the last sentence in that, because we believe the last sentence is somewhat covered in other instructions, and we are quite willing to surrender that.

Mr. Abt: I have no objection to a charge which says, "The overthrow of the government by force and violence" are not the words, but I do object to the formulation here, because on the question of the aims and objectives of the Communist Party "include the violent overthrow of the government."

That raises all questions, as to the last one.

If Mr. Parsons can find words other than "the overthrow of the government by force and violence," that those words are not words of art and the same idea and doctrine can be advocated by the use of other words, all right.

Mr. Parsons: By the use of other words?

Mr. Abt: Yes.

Mr. Parsons: That is all we want.

Mr. Abt: Words which have equivalent signifi-

1195 cance.

Mr. Parsons: We have no objection to that.

Mr. Abt: We may disagree with your final formulation, of course.

Mr. Parsons: Then that completes that one.

1196 The Court: Now, number "F".

Mr. Parsons: Do you have that?

The Court: Yes, I have it here. What about it?

Mr. Abt: The first part of it, down to the sentence that starts, "If", I think I recognize as a quotation from your Honor's opinion in denying our motion to dismiss, and while I have no particular quarrel with that langnage,

it seems to me it is completely out of place in this instruction, and that this point would lead the jury to believe you are passing on some question of fact here.

I think it is entirely unnecessary for the purpose of instruction, and should come out.

Mr. Parsons: I feel it is one of the fine statements of law in these cases. The jury has not read your Honor's opinion and does not know this is an extract from your Honor's opinion, and would not gain the idea it is an expression by your Honor. It is merely a statement of fact that one of the purposes of the Party is the violent overthrow of the government, which should give anyone pause, where membership is retained with knowledge.

Mr. Abt: That is the issue in this case.

1197 The Court: What?

Mr. Abt: That is the issue in this case, your Honor, as to whether or not the Defendant did that, and stated in the form in which it is stated here, in this instruction, it seems to me that it very seriously tends to prejudge the issue, which I know your Honor does not want to do.

Mr. Parsons: I think it has to be read in full context together with your Honor's last statement; if from all the evidence that you find beyond reasonable doubt that the Communist Party has as one of its purposes the violent overthrow of the Government, and "if you have found that the defendant has committed an overt act which constitutes the crime in this case."

Mr. Abt: First, it seems to me if Mr. Parsons wants that instruction it should then be there without the preamble.

Mr. Parsons: You mean without this part (indicating)?

Mr. Abt: Yes.

The Court: You mean the instruction should be given without the facts? That the rest should go out?

1198 Mr. Abt: Yes, and I have a further objection, that is, it speaks of the advocacy of the Party and not the members.

Second, it leaves out the term, "As soon as circumstances permit," but more important than that, it leaves out one of the elements of the crime, the intent, and speaks only of knowledge. I should think the jury could bring in a verdict without the word "intent".

That is your own indictment, Mr. Parsons.

Mr. Parsons: All right. We will very gladly insert the language of the statute.

Would your Honor care to leave the first part in?

The Court: No. I think the first part should go out.

Mr. Parsons: The first part should go out?

The Court: Yes.

Mr. Parsons: And revise it as to the statutory language.

1199 Mr. Parsons: Now we have "G". That was the ever-present "G" earlier.

Mr. Abt: First, your Honor, I think the reference should be to the indictment, and not to the Smith Act.

The Court: What?

Mr. Abt: In about the fifth line:

"—does not in or of itself constitute a crime" of the indictment rather than the Smith Act.

Mr. Parsons: I accept that.

The Court: Whatever it was.

Mr. Abt: There is a general reference there, your Honor. There is a reference to members of the Communist Party.

First, my usual objections to the formulation, but more important than that the issue here is not the teaching and advocacy but the knowledge of the teaching and advocacy of the proscribed character. Obviously, the man had knowledge of something.

Mr. Parsons: I concede that, and I will put it into language you suggest. Wherever you find that.

The Court: You are going to have a new set of instructions, I can see that.

1200 Mr. Parsons: That is Judge Mathes' instruction.

Mr. Abt: The Mathes instructions were in a different case and under a different indictment.

Mr. Parsons: Not a different indictment. Oh, yes, a different indictment, but the same law, the same statute.

Mr. Abt: This instruction also deals with only one element and not the whole, and makes no distinction.

Mr. Parsons: We will substitute the entire statute.

Mr. Abt: I think the final paragraph,

"Evidence of the fact of membership and the holding of office in the Communist Party over a long period of time can and should be considered by you;"

I think it is up to the jury to find what they should consider.

I don't think you should direct them to what they should consider.

Mr. Parsons: Yes, we will remove the word "should".

The Court: No, I don't think that should be pointed out particularly.

Mr. Parsons: The word "should"?

The Court: I mean the evidence.

1201 Mr. Parsons: Just the word "can".

Mr. Abt: As I understand the Judge, he thinks the whole paragraph should go out.

The Court: I think the whole paragraph should go out. All right.

1202 Mr. Abt: Now we have "H." your Honor.

This is an instruction on what matters the jury should find in considering the question of membership. Membership is constituted—

The Court: That is correct. I looked that over. I know.

Mr. Parsons: Your Honor, even though membership may be conceded by counsel or by his attorney to your Honor, it has not been by concession before the jury.

Mr. Abt: We have requested an instruction from your Honor that the membership is conceded.

The Court: Yes.

Mr. Parsons: Then there is this problem:

When we get to the point of conceding any fact, it is a fact which at the same time means we have to prove the facts conceding that element.

The Court: You may argue that, but to tell them the defendant Lightfoot was a member of the Communist Party is not a question of fact.

No, I don't think it is a question of fact.

Mr. Abt: It is not a question of fact. They consider that before they go into the jury room.

The Court: I am going to refuse that instruction.

Mr. Parsons: Your Honor, consider the entire
1203 thing, would you, before refusing it?

The Court: I am not going to do that. Don't take up my time by giving me an instruction proving he is a Communist by the acts or circumstances or anything whatever, because it is admitted.

I permitted you to show by documents that he was a Communist, but now to make proof I don't think that is necessary at all.

Mr. Parsons: May we revise instruction which will

keep the jury from considering any of the points admitted in evidence?

The Court: I think you have one instruction.

Mr. Parsons: You think that covers it?

The Court: I you don't have one, I will do that.

1204 Mr. Abt: As to "I," I understand, Mr. Parsons, you are going to change that all the way through.

Mr. Parsons: This is "Principles and objectives," you want the statutory language?

Mr. Abt: That is right.

Secondly, your Honor, I just cannot understand the instruction. I cannot very well comment on it.

The Court: Well, here it practically covers the same thing we discussed before, that it may take into consideration as to his knowledge of it from the length of membership therein.

Mr. Abt: There is also the language here, as to promoting doctrine of the Party. Obviously, if he is promoting good doctrine, that doesn't give rise to any guilty knowledge.

Mr. Parsons: I concede the Judge's point, that is, we should have an instruction on whether or not he is a member. This would have to be revised to not indicate we are giving a membership instruction, so we do have the right to show that the length of time of his membership may be considered by the jury as to whether or not he had an opportunity to know what its aims and purposes were.

If that is covered by another instruction—

1205 The Court: I think it is.

Mr. Parson: If it is, we would be just as well off to concede that point.

May we pass this one?

Mr. Abt: In addition, Mr. Parsons, I want to emphasize the point that we are talking about knowledge of proscribed teaching and advocacy.

If he has knowledge of innocent advocacy, obviously that is meaningless.

Mr. Parsons: I don't know what you mean by "innocent advocacy."

Mr. Abt: You say you can infer knowledge, that means knowledge under the indictment, knowledge of that purpose from his duties as officer and functionary, in teaching and advocating doctrine of the Party.

If he taught and advocated nothing but innocent doctrine, obviously the jury couldn't decide that is showing he had knowledge of bad doctrine.

Mr. Parsons: It seems logical, for example, if it is established that one of the aims and objectives of the Party is the violent overthrow of the Government of the United States, and then next, if the defendant is bound to have knowledge of the aims and objectives, he does have knowledge of that one aim and objective.

1206 Mr. Abt: That doesn't follow at all. He may have knowledge of good aims and objectives, and none at all of the bad ones.

I think that should be made clear.

Mr. Parsons: May we have leave to re-write that instruction, your Honor, that is No. "I"?

The Court: Yes.

Mr. Parsons: I acknowledge Judge Chesner didn't well word it himself there.

The Court: Not only that, but it was given in another type of case.

Mr. Abt: Another type of case, which was a conspiracy case.

Mr. Parsons: We will re-write it to fit this case.

Mr. Abt: On "J", your Honor, the first sentence, I think I understand the point, but it certainly is badly put.

I take it what you mean is that there need not be proof that the defendant himself actually taught and advocated the violent overthrow of the Government?

Mr. Parsons: That is right.

Mr. Abt: If he has the necessary knowledge and intent.

Mr. Parsons: That is right.

1207 Mr. Abt: I think you have got to say that, Mr. Parsons, and not kind of short it. Nobody will understand what you are talking about.

Mr. Parsons: I didn't mean to do it short-handedly. The way we formulate this thing is that the first thing we try to do is sound like lawyers, you understand that, counsel.

Mr. Abt: I withdraw the remark. I might say something nasty, but I won't.

The Court: What else?

Mr. Abt: The usual objection, your Honor, as to the statutory language rather than the Communist Party teachings and advocacy.

The Court: Yes.

Mr. Parsons: We accept that, yes.

Mr. Abt: Just a moment, your Honor, I have some more.

Again there is this complete confusion that runs throughout these instructions between good and bad purposes. It says as to the aims and purposes of the Communist Party, which may be good, which may be bad, may be indifferent.

Mr. Parsons: There we are substituting the statutory language, your Honor.

1208 Mr. Abt: All right.

The Court: Proceed.

Mr. Abt: "K," your Honor, I think is very bad.

Mr. Parsons: I apologize for the typing, that is "of" rather than "for."

Mr. Abt: I am ~~not~~ objecting to the typing.

First, there is no reference to proscribed or bad doctrine, but just as to aims and objectives.

Second, your Honor, as your Honor pointed out in your opinion, the aims of an organization or the advocacy of its members can change from time to time, and the mere fact that an organization advocated something at one time and that the defendant knew that it advocated something at one time does not raise the presumption that that advocacy and knowledge continued over an indefinite period.

The Court: I don't think your presumption is correct, either.

Mr. Parsons: We were relying to some extent on language used by your Honor in his opinion.

The point that is made there is that if a person having acquired some knowledge, if a person is of the age of reason, he acquires knowledge, it is presumed he retained the knowledge that he acquired.

1209 Counsel has made a very good point, however, and that is that the knowledge that he acquired must also be, to be of any value during the statutory period, must also be conditioned upon the fact that the fact itself did not change. In that respect, I should correct that then to show that the aims and purposes did not change from that time.

The Court: I don't know that that cures it. You take, for instance, your own statement of age of reason, once having acquired knowledge of fact, he is presumed thereafter to retain that knowledge.

Now the presumption is that some of your witnesses had the knowledge of the Communist Party, but they quit, they changed. Apparently they did. They say they withdrew from the Party or no longer belonged to it.

Mr. Parsons: I would agree that character would change, but just if you know something, if one learns an algebraic formula at the age of 20 or at the age of 15, it is presumed that he has that algebraic formula in his knowledge at the age of 30.

Mr. Abt: I don't think there is any such presumption, and the jury is likely to apply it to the testimony of your witnesses, the fact they once heard a conversation, they will never forget that conversation.

1210 The Court: No, I don't think I will give that.

Mr. Parsons: I will have to go back and correct my papers.

Mr. Abt: Your Honor, this, to me, is a very confused and confusing instruction.

I think I understand what it attempts to deal with.

I gather the first two paragraphs deal with the issue of general intent, but it seems to me there is no issue of general intent in this case. There is no question that Mr. Lightfoot knowingly and intentionally is a member of the Communist Party.

The intent issue is the issue of specific intent, whether he had the specific intent to bring about the violent overthrow of the Government as soon as circumstances would permit.

And it seems to me therefore that the first two paragraphs should go out and that the last paragraph should specifically refer or should indicate what the specific intent is under the statute.

The Court: Well, I think it does, Mr. Abt.

"• • • the principles of the Party," and those principles included the purpose of advocating the overthrow of the Government by force—

1211 Mr. Parsons: It is in there.

I believe your Honor covers the first in a better manner in your general instructions on circumstantial evidence. I will quickly concede that.

The Court: Yes.

I think the first two paragraphs—three paragraphs, I will delete, strike out, and then with respect to the element of intent, I will add that in there.

Mr. Abt: Just one other thing, your Honor:

I don't think we can say you can infer this from all of the evidence in this case because again much of the evidence was not connected with Mr. Lightfoot.

The Court: Well, I think I will strike out "from the evidence in the case" and you can—

Mr. Abt: We can argue it out.

Mr. Parsons: Among ourselves.

Would you like to change, for counsel's benefit, I don't think he mentioned it, would you like to change the word "can," your Honor, to "may" in the second line?

The Court. Which one?

Mr. Parsons: In the second line.

1212 The Court: Oh, yes, to "may."

Mr. Abt: Your Honor, I think if you are going to leave in the "* * * the evidence of the case * * *," for the purpose of my record I want to object to that instruction because it seems to me the only evidence they should consider is evidence of acts and declarations which are connected with the defendant.

The Court: Now we are at the end.

Mr. Abt: Again, my usual objection about the formulation of "* * * the Party advocates * * *"

Mr. Parsons: Yes.

Mr. Abt: And it be left out as speedily as circumstances would permit.

The Court: What do you say about that?

Mr. Abt: Mr. Parsons agrees on this.

Mr. Parsons: We are going to change that, your Honor.

Mr. Abt: I have something else. I just cannot make out my notes for the moment. If you will just give me a second, I will figure out what I had in mind.

Well, again, your Honor, this is, as I understand it, is a general intent instruction, and we are not dealing here with general intent, we are dealing here with

1213 knowledge and a specific kind of intent.

Mr. Parsons: We say specific intent.

Mr. Abt: I know you say specific intent, but I just don't get the point.

"a person who knowingly does an act which the law forbids, purposely intending thereby to violate the law, or recklessly disregarding the law, acts with specific intent."

Now, what place does that instruction have here?

The Court: Where are you reading from?

Mr. Abt: The last three lines of the first paragraph, Judge.

The Court: Of "M"?

Mr. Parsons: Yes, sir.

Mr. Abt: I just don't understand what place that kind of instruction has here.

There are two elements to this crime.

One is knowledge of the proscribed advocacy and the other is intent to bring about a certain result.

This business about "recklessly disregarding the law," just to me is meaningless. I just don't see where it fits into the case.

1214 The Court: I don't think so, either.

Mr. Abt: The very first sentence is a tip-off. It seems to me in every crime there is a union of act and intent, that is very true, but this is a very peculiar kind of crime because it does not rest on an intentional act, it rests on a particular act accompanied by a very carefully described and specific kind of intent.

It is not an intent to do the act.

Mr. Parsons: The only purpose we had in this instruction, your Honor, was to inform the judy that the overt act of his crime is membership, being a member, not having any other purpose.

The Court: This is admitted to, I know that.

Mr. Parsons: I mean the only overt act required is knowing membership, and the Government does not have to prove he did anything else but knowingly being a member.

Mr. Abt: You have already stated the element of the crime, Mr. Parsons.

Mr. Parsons: I believe we retained one instruction which does that in part, so I am not going to fight with this.

Mr. Abt: That whole instruction goes out?

1215 The Court: Yes.

Well, the testimoney of the circumstantial evidence again.

Mr. Parsons: Your Honor has those in general instructions.

The Court: I have that. You may withdraw that.

Mr. Abt: What instruction are we on?

The Court: "N", that is on circumstantial evidence, and I will give the instruction.

Mr. Abt: You will give an instruction.

The Court: There are two kinds, one circumstantial —there are two kinds of evidence, one direct and the other circumstantial evidence, and circumstantial evidence is legal evidence, words to that effect.

Mr. Abt: All right.

The Court: Now, "O".

Mr. Abt: "O" raises a fundamental issue between us.

The Court: Beg your pardon?

Mr. Abt: Raises—

The Court: The same question?

Mr. Abt: No, squarely raises the issue between the Government and ourselves. That is to say, whether the teaching and advocacy is that of the organization or that of the members.

1216 The Court: Well, the organization. What do you say about that, Mr. Parsons?

Mr. Parsons: I say this, your Honor: That is our basic difference, is that counsel insists that we are talking about the teaching and advocacy of particular members of the Communist Party, that the statute is referring only to the teaching and advocacy of particular members of the Communist Party, that the indictment refers to that, and that our proof should refer to that; whereas we maintain that the statute and the indictment and our proof is talking about the Communist Party as a single entity and not about its individual members, and that is the only possible interpretation, it is the only interpretation given in all of the cases that have case opinion on the Smith Act.

And it merely says that the teaching and advocacy of the overthrow of the Government of the United States as stated in the indictment and as stated in the law, in the Smith Act, refers to the teaching and advocacy in this case of the Communist Party of the United States, and not to its members individually, not to its members individually but of the Communist Party.

1217 "Whether or not members of the Communist Party teach and advocate this doctrine or objective is immaterial to the issues of this case." And that is the position that is taken throughout this whole case.

The Court: You claim it is all of the members?

Mr. Abt: No, your Honor.

May I finish, Mr. Parsons?

Mr. Parsons: I am sorry.

Mr. Abt: We say at least a majority of the members must so teach and advocate; otherwise the society couldn't be a society of persons who teach and advocate.

The Court: If that is your objection, I will overrule it.

Mr. Abt: I wonder if your Honor will do this, before you act on this instruction:

We have an instruction with our counter-interpretation. I wonder if you would look at them, both, before you rule one way or the other?

The Court: I think I have looked at it, but if not, I will consider that.

Mr. Abt: If your Honor is considering giving that instruction, we object to it.

1218 The Court: I don't think all of the members, or even a majority, have to join in the general thing.

Mr. Parsons: That is right.

The Court: How about those books, that is "P"?

Mr. Abt: Let me take a look at it.

Mr. Parsons: I don't want to preclude counsel. I took the liberty of thinking that some of the books we send back to the jury, your Honor, have been admitted into evidence only as to certain passages, and the question in our mind is, shall we cut those pages out of the book or shall we send back to the jury a list with an instruction that they may consider only those passages in those books?

Do you see our problem? It is a practical problem I want to work out.

The Court: I have considered this somewhat in chambers.

Mr. Abt: First, I don't know whether you want to give them all of the books.

The Court: What do you think?

Mr. Abt: What I would do is advise them if they want to see any piece of evidence or want to see your Honor's charges during the course of their deliberations, that they may ask for them.

The Court: No.

1219 Mr. Abt: No?

The Court: No, no, because if I give that instruction, they would be asking for them all of the time, unless it is something specific. I would say you have got all of the instructions, or you have all of the instructions that you are entitled to.

Mr. Abt: You are making a distinction now between the instructions and the books?

The Court: Yes, a distinction.

I think it would be a mistake simply to send them in there and give them all of these books.

If they want to look at a book, they can ask your Honor, and the book would be brought in to them.

Mr. Parsons: I think certainly they either should have the instruction and the books, or we should just type out and have available for them the passages, which is a very voluminous job.

I think the instruction is a strong one and that they would respect it if your Honor were to give it and would not look into other passages or consider other passages of books which were not entered into evidence.

I don't think that the jury should be precluded from having any and all exhibits that are entered into
1220 evidence with them in the jury room.

And if the Court instructs them, "Now, you are not to consider the parts of exhibits which are not entered into evidence, you are to have a list that sets out those parts that are in evidence and consider only those parts." I think they are average, honest people, and they will do that, they will follow the Judge's instruction.

1221 Mr. Abt: I think it is going to be the most confusing conceivable thing you can do.

The Court: What do you think should be done about it?

Mr. Parsons: It is just a practical problem. We are glad to work it out.

The Court: That is what I think it is.

Mr. Abt: My only suggestion is to let them, if they want to look at an exhibit, to ask for it and it will then be given to them, for them to see, rather than sending a whole library into the jury room.

Mr. Parsons: I think the Government has a right to have the exhibits as evidence with them in the jury room.

The Court: All of the books, you mean?

Mr. Parsons: All of the exhibits in evidence. Our only problem is what shall we do where a book has just say, four pages; shall we send the book in or shall the Government type out those four pages so they won't see the rest of the book?

It is a practical problem.

Your Honor, suppose we leave that to your Honor?

The Court: No, no, because I have given that a
1222 great deal of thought since we started here, and still am thinking about is as to what should be done.

Mr. Parsons: This seems to be a very practical solution.

Mr. Abt: Mr. Crockett informed me, Judge, as to the procedure before Judge Medina in the Dennis case.

What was done there was that the books were not given to the jury when they went out. When the jury requested an exhibit, if the exhibit consisted only of a few pages of a book, the book was sent in to them with a piece of paper around it so that only the pages in evidence were clearly indicated, and they then looked at those particular pages, But they only got the exhibit on request.

Mr. Parsons: May I say this, your Honor, the Dennis case, of course, was the first of these cases.

The Court and the attorneys for both sides were feeling their way all of the way throughout that case.

It occurs to me that is perhaps one of the reasons it lasted so long. The more recent cases perhaps have a more refined approach to the handling of the problems.

I wonder if I might ask Mr. O'Donnell to inform
1223 the Court from his knowledge of what happened in the Seattle and Detroit cases?

1224 Mr. O'Donnell: In Detroit and Seattle, the Judge made all of the Exhibits in evidence available to the jurors. It is my recollection that in both of those cases the Judge sent the Exhibits in their entirety, even though there were only certain passages read to the jury.

In those cases, the whole books were in evidence, but he said—well, I will put it this way, the passages that were referred to and used were marked off in the books, and I just don't recall the exact technique, but if there was a quotation from page 35 read in the book, if it was a couple of paragraphs, the book would be bound open to that particular point, and the actual passage would be marked off in red ink or red pencil so the jury knew the exact passage on which the government relied in that particular Exhibit. It was just a matter of—but he did allow them to see the Exhibits, and in both of those cases he sent the entire Exhibits into the jury room.

Mr. Parsons: I believe, your Honor, that we could even refine upon that method, because I can see some objection

that the Defendant would raise in that method. If
1225 you used a red pencil to mark it off, it might add an unnecessary emphasis and there might be a loss of pagation.

I believe the jury should be instructed about it and given the books, and give an impersonal approach to it. Anv way it is done—

The Court: Well, that is giving them the books and let them take instruction into the jury room and such-and-such a passage of the book and paragraph was offered in evidence.

Mr. Parsons: That I think is the best approach.

Mr. Abt: Judge, Mr. Crockett and I have been discussing this, and I think we will be obliged to object to any procedure that gave the jury a whole book where only certain pages of that particular book were admitted in evidence.

Mr. Parsons: I feel, your Honor, that if the jury is instructed. that the Court of Appeals would quickly sustain the handling of this particular procedure as the only possible way it could be done.

The Court: Well, the only other way I know of is to have you—and it would take quite a bit of work—

Mr. Parsons: It would take a great deal, and in
1226 addition to that, your Honor, the Jury has seen books in their entirety as they have been used here in the courtroom, and if we were to type out excerpts from them, the very impression of the nature of the evidence would be reduced.

I think the government would have a right to have the jury see these excerpts and only the excerpt, but see it in the book.

The Court: How are you going to seal them off?

Mr. Parsons: That is difficult. We have to depend upon the instruction.

Mr. Abt: Well, Mr. Crockett points out that you can seal them with Scotch tape, your Honor, seal off the pages, except those that are in evidence.

Mr. Crockett: May I suggest this, your Honor, that it seems to me we have two questions here. The first one is, should the jurors be given all of these books, whether they request it or not.

The Court: Yes.

Mr. Crockett: And it is my thinking that as to most of

these books, only certain pages were offered in evi-
1227 dence.

The Court: Yes, that is correct.

Mr. Crockett: And therefore, if you give the jurors the entire book, you are giving them stuff that was not in evidence.

Let's take the other side, suppose a juror requests a particular book, where there were certain pages in evidence. In that case it seems to me a simple process of opening the book and taping off all of those pages that are not in, that your Honor did not admit in evidence, and send the book in.

If the tape comes back broken, it is pretty obvious that someone read evidence that was not admitted here during this trial.

1228 I say that because that is the way—

Mr. Parsons: It is not necessarily evidence, but for fear that we might make the mistake of considering it as evidence of the fact that there is something which was not in evidence, we should avoid that approach.

We should give them the instruction and leave it to the integrity of the jury. The welfare of the defendant is left to the integrity of the jury, and surely we can leave to the integrity of that same jury the problem of following a stern instruction by the Judge.

I think that we must send all of the exhibits that have been introduced into evidence in their entirety, and those which have been entered in part, to the jury; otherwise, there is not any possible way that the Government could be assured that the jury would consider or would remember to send out and request any one or another of some 75 to 80 exhibits. I don't see it.

The Court: The only thing I can see about it, each side will have to type out the parts that were admitted in evidence and send that to the jury.

Mr. Parsons: That is the only other way I can see.
1229 It is one of two ways and it would depend upon your Honor's instruction, or we could do that.

The Court: I think that is the only way it can be done.

Mr. Abt: That is what you want done, your Honor?

The Court: I see no other way.

Mr. Parsons: I don't see, your Honor, that we have the staff with which to get it done in time. I was thinking in terms of the size of our exhibits.

Mr. Abt: How about photostating them? Surely the F. B. I. would photostat them.

Mr. Parsons: I would have to inquire of them. This is Friday and we have to have them by Monday. It is a practical problem.

The Court: Well, you wouldn't have to have them then, because I think the argument will last over until Tuesday. I don't want to send the jury out late at night.

What I have in mind, and I might as well tell you, is that the Government will talk Monday morning, and one of the defense counsel Monday afternoon, and the other defense counsel on Tuesday morning, and Tuesday morning also will be set aside for the Government.

Mr. Parsons: That would give us more time. I
1230 think we can find a way of doing it, one way or another.

The Court: You see the reason I mentioned it the other day, and I don't understand the theory, but without criticising it, the procedure of the New York Commission on that, it is the Government's duty, or it is the plaintiff's duty in a civil case to prove by the greater weight of the evidence, and that is the reason they open and close. Likewise, it is the Government's duty to prove beyond all reasonable doubt.

Now the Government in making its opening statement must acquaint you, in general terms, at least, of what they expect, and they cannot comment on something new in their closing argument.

Mr. Abt: Their first statement has to be a fair opening, in other words?

The Court: That is right, a fair opening statement.

I don't know how that can be done if you let the defendant talk first.

Mr. Abt: It can't be done. You have no idea what the Government is going to say. I would immediately accept the Illinois procedure as preferable to what we do in New York.

1231 Mr. Parsons: May we do this? Would you hold this in abeyance and we will report back to you on our progress Monday morning?

The Court: I think they will have to be photostated, some way or other.

Mr. Parsons: Photostated or typed.

The Court: And send that portion only to the jury.

Mr. Parsons: In the meantime, your Honor, would you reserve ruling on this instruction?

The Court: Yes, I will reserve ruling on it, but I am telling you now what to do. As you say there, all of the books will go in.

Now, the last one is "Q" of the Government's instructions.

1232 Mr. Abt: Yes, your Honor, and we have the usual objection of "aims and objectives of the Communist Party."

If you put in the statutory language—

Mr. Parsons: I believe it has been done in this one.

Mr. Abt: Let's see:

"Was the nature and character of the aims and objectives of the Communist Party during the period—that is to say, whether the Communist Party was—"

Mr. Parsons: We put it in statutory language, here.

Mr. Abt: You are simply saying:

"Determining whether the Communist Party of the United States was a society, group or assembly of persons who teach and advocate—" Leave out "aims and objectives."

Mr. Parsons: That is all right. You mean to strike "in determining" and go down to "whether"?

Mr. Abt: That is right.

But again, your Honor, there is a more fundamental objection to this instruction, and that is that in the instruction the jury could consider the teaching and

1233 advocacy of the Communist Party apart from the Defendant's knowledge of that teaching and advocacy.

I think we have been over that ground before, and the teaching and advocacy of the Party is only important and only in issue here to the extent that the Defendant has knowledge of it.

It seems to me, therefore, that there should not be an instruction merely on teaching and advocacy, apart from knowledge.

The Court: I think you have to bring in that knowledge somewhere of that fact, certainly.

Mr. Parsons: I think in this one particular issue the jury must make some determination. It is immaterial what his knowledge is, if they don't find that it is possible for him to know that the teachings and aims of the Communist Party are to overthrow by force and violence.

The Court: Well, you also say, "And that he knew it."

Mr. Parsons: That is true.

The Court: Yes. If he wants to reoffer that, that is all right.

1234 Mr. Parsons: I should include that?

The Court: I see another one here.

Mr. Abt: I have no objection to that.

The Court: All right. It is accepted. I think it is proper.

Mr. Parsons: You want us to revise "Q", your Honor, to include knowledge?

The Court: Yes.

Mr. O'Donnell: Your Hono might I make one remark at this time that from a practical standpoint, in attempting to photostat these exhibits, I assume that in photostating exhibits, in the case, for example, of a book, of which certain paragraphs or pages were offered and read to the jury, I think we should photostat the title page of the book to identify what the book is and what the exhibit is, and that would be appended to the actual passages?

Mr. Abt: Oh, sure, of course.

The Court: I think so.

Now we will take up the Defendant's instructions.

Mr. Parsons: Your Honor, I of course am still of the same opinion, but I don't want to assert it at this
1235 time, that the jury should be instructed that the Defendant has admitted that he is a member of the Communist Party, but since we have already covered this matter, I must concede it in this argument; but I believe that the Defendant's instruction 1 is complete in the first sentence, because if we go into the part that begins "Therefore, there are only two issues on trial before you, first, did the Defendant, within the period, know the Communist Party of the United States to be such a group; and second; the Defendant within the period intended to bring about the overthrow by force and violence as speedily as circumstances would permit—" would give the jury a misstatement of one—it would fail to give the jury the statement of one other issue.

The Court: What is that?

1236 Mr. Parsons: That is whether or not the Communist Party did, in fact, advocate the overthrow of the government of the United States by force and violence.

Our basic difference, your Honor, is this: The govern-

ment feels the three issues are, first, the teaching and advocacy of the Party itself; second, the membership, which has been omitted; and, third, knowing, his knowledge of the aims and purposes.

Counsel insists that the only three issues are whether or not he has been a member; and, second, whether or not he knew that its purposes were the overthrow; and, third, whether or not he intended to do anything about it

I think that the jury should and must and in this case should make the determination that the aims and purposes of the Communist Party were the overthrow of the government.

They should make that determination whether or not it was, and then, once having made that, in their minds, they are free to consider whether or not the Defendant as a member knew about those aims and purposes.

1237 I think it confuses the jury.

Mr. Abt: That is a conspiracy theory of this case, your Honor, and that is not what this case is.

Mr. Parsons is saying, in effect, that first the jury should determine whether there is a conspiracy; that is to say, that the conspiracy is the Communist Party which engages in illegal advocacy, and then it should determine whether or not the Defendant was a member of the conspiracy, with a knowledge of its purposes.

But this isn't a conspiracy case, your Honor, it is an indictment on an issue, and the only issue is whether he knew the Communist Party of the United States or its members engaged in the prescribed advocacy.

It is utterly immaterial as to what the objective fact was with regard to the Communist Party.

The Court: Certainly he couldn't be charged with the fact if he just knew that the Communist Party had—

Mr. Parsons: If he was a member and knew, that is all the law requires, as long as there was a general

1238 intent set out in the Dennis case, which is inferred from the nature of his knowledge and his activities in the Party.

The Court: It says here, "unless you find to your satisfaction beyond a reasonable doubt that the Defendant had knowledge and such intent—" it says that in the instruction.

Mr. Abt: That is right.

The Court: You have got to find that he had knowledge of it, and that it was the intent.

I think I will give that one, Mr. Parsons.

Go to number 2.

Mr. Parsons: Since, your Honor, we say that membership is not in question, I think that instruction is also superfluous.

Mr. Abt: Oh, the fact of membership is not in issue, but it is certainly an important question before this jury as to whether or not membership is a crime. As a matter of fact, his Honor so instructed the jury after they were first impaneled, I think, or at least during the voir dire.

Mr. Parsons: I think further, your Honor, that
1239 that this is confusing. This instruction seeks to state in another manner what is a problem in all of these cases, and that is that membership per se is not enough, going back, of course, to the interpretation or to the language of the Internal Security Act.

It says, "Therefore you cannot find the Defendant guilty because he was a member and held office in the Communist Party, or because you find from the evidence that he engaged in any of the activities which we have just described, unless you find from the evidence to your satisfaction beyond a reasonable doubt that he knew the Communist Party to be a society—" and so forth.

And, "Unless you further find from the evidence beyond a reasonable doubt that he intended to bring it about, you cannot find—"

To correct this, before it would be acceptable, we would have to change the word "cannot" to "may not."

1240 "You may not find the Defendant guilty because he was a member of and held office in the Communist Party, or because you find from this evidence that he engaged in any of the other activities which I described. Unless you find—"and so forth.

The first part is the objectionable part, the first paragraph, "nor is it a crime to attend or speak at a Communist Party meeting, or to teach in Communist Party schools, or write for Communist Party publications—" and so forth.

That is inaccurate as a statement of the law, the condition of the law, unless we include the statement "per se."

"It is not a crime, per se—"

The Court: I think that "was it a crime"—by itself—

Mr. Abt: Do you want to put that in?

The Court: "Nor was it a crime"—at the second line.

Mr. Abt: "Nor was it a crime by itself—"

Mr. Parsons: For each one of those phrases, may we have that "by itself" so the jury may clearly understand?

1241 Mr. Abt: No, because then the jury would get the impression that if he did two of those things, it would be a crime.

I think his Honor's suggestion is adequate, nor was it a crime by itself to teach, to attend, to write—"

Mr. Parsons: In order to cure it, you are going to have to say, "but the jury may consider these facts—"

The Court: Well, you have already given an instruction on that.

I will give that one.

Mr. Abt: "By itself—"

Mr. Parsons: May we add that "by itself," your Honor?

The Court: Yes, that is what I had in mind.

Mr. Parsons: I believe that would help.

I think the first sentence is highly objectionable, your Honor, "then neither the Communist Party nor Communism is on trial in this case."

I think it brings into bold relief before the jury a large question which need not be stated one way or the 1242 other; whether or not it is on trial is not material to this question.

Everyone knows the Defendant is the only person on trial. The jury knows that, and to make that statement as such, I believe is prejudicial to the government's case.

Mr. Abt: It seems to me, your Honor, in view of the nature of this case—

Mr. Parsons: May I finish, Mr. Abt?

I had another point.

Mr. Abt: Go ahead.

Mr. Parsons: I feel it is sufficient to begin with the phrase that the issue in this case is not whether the Communist Party had advocated the overthrow of the government of the United States by force and violence. I think that that should be revised to state that the "principle issue in this case is not whether or not—" because that is one of the issues that the jury must make a finding as to that.

The principle issue in this case is whether the defendant knew, and if we could use the word "principal" and

eliminate the first sentence, I believe it would be a reasonably accurate state of law.

1243 The Court: I think that is the principal issue.

Mr. Parsons: Whether he knew about the Communist Party advocacy, that is one of the issues.

Mr. Abt: I am not sure I get Mr. Parsons' statement. What do you want to say, Mr. Parsons?

Mr. Parsons: "The principal issue is not whether—"

Mr. Abt: No.

Mr. Parsons: And down here, the "Principal issue is—"

Mr. Abt: Your Honor, I have no objection to saying what the principal issue is, but I would not say that the principal issue in this case is not whether—because it is an issue in this case, and that is what I think we have been over and over here. The issue is knowledge, the issue is not the objective fact.

I am perfectly willing to take, your Honor, to accept Mr. Parsons' formulation that the principal issue in this case is whether the Defendant knew, and so forth, but I would not say that the principal issue in this case is not whether or not the Communist Party has advocated

1244 the overthrow of the government.

The Court: No, I would just add "And the principal issue in this case—"

Leave it just the way it is, except put in "principal."

Mr. Parsons: That is beginning with the first "the" on line 2?

Mr. Abt: No, no.

The Court: No.

Mr. Abt: On line 4, "the principal issue in this case is whether or not the Defendant knew—"

Mr. Parsons: I will still object to the first sentence there.

The Court: Yes, I think that the principal issue should go in there, too.

Mr. Abt: Where, your Honor?

The Court: The second line after "issue."

Mr. Abt: I'm sorry, I don't get that, your Honor.

"The principal issue in this case is not whether—"

The Court: "—is not whether the Communist Party has advocated the destruction by force and violence—"

1245 Mr. Abt: It is our position it is not in issue at all.

The Court: Well, you say it is in your instruction, you say the issue is so-and-so.

Mr. Crockett: The issue is not—

The Court: All right, then. "the principal issue is not—"

Mr. Abt: All right, your Honor, I will put it in.

The Court: Now, number 4.

Mr. Parsons: Your Honor, this is the one that goes to our basic disagreement with Counsel as to whether or not we must prove that the majority of members of the Communist Party advocated overthrow in order to prove the Communist Party advocates the overthrow, and I think we argued that when Counsel objected to our instructions to the contrary.

Mr. Abt: I don't care to argue it any further. I understand his Honor's position.

I fully understand.

Mr. Parsons: This is rejected.

We have no objection to number 5. I think it has been covered.

1246 The Court: I think so.

Mr. Parsons: We have no objection whatever to number 6. I think it is a fair statement.

The Court: I probably won't give it. I have one I think is better.

Mr. Abt: I am sure you have got a better one.

The Court: No, I say that the Defendant may or may not, as he chooses, testify in the case.

Mr. Abt: There is no inference—

The Court: Of course I have another one if he does testify.

1247 Mr. Parsons: Our objection to No. 7, of course, your Honor, is that it is a conspiracy case charge.

Mr. Abt: Conspiracy case?

Mr. Parsons: An attempt to tell the jury that you may not consider at all any of the association of the defendant with any other persons in the Communist Party as throwing any light on his activities. Here again I refer to your Honor's own statement.

Mr. Abt: Pardon me. You got the wrong instruction, this is not association, it is books, and third party declarations.

The Court: No. 7.

Mr. Parsons: The first sentence, I think it is not right:

"The doctrine of personal guilt, as distinct from guilt by association with others, is one of the fundamental principles of our law."

Of course it is, but it is not involved in this case. "Therefore, you cannot impute to the defendant or charge him with knowledge of the contents of any book or writing circulated by the Communist Party, unless you are
1248 satisfied by the evidence and beyond a reasonable doubt that the defendant himself read such a book or writing or that its contents were otherwise brought to his personal knowledge."

I don't think that is necessary.

Mr. Abt: How can you charge him with knowledge of a book he hasn't read?

Mr. Parsons: We are not charging him with knowledge of the book. We are charging him with knowledge of the aims and purposes of the Communist Party, whether he read it or not. He may have acquired it by many other ways.

The Court: It says:

"* * * or that its contents were otherwise brought to his personal knowledge."

Mr. Abt: Of course you must prove that.

Mr. Parsons: I don't think we have to prove how he acquired his knowledge. I think the jury may determine that from all of the facts in the case.

I think instructions like these should begin with "The jury may consider all of the facts in the case in arriving at their determination."

Otherwise, we are getting down into instructing the jury as to the evidence in the case.

1249 Mr. Abt: Not as to the evidence. We are simply saying that you cannot charge a man with knowledge of the existence of something unless there is some proof to the fact its existence was brought to his knowledge.

Mr. Parsons: Counsel knows that this instruction will tell the jury, "Now there was a witness placed on the stand who testified concerning the books and the documents of the Communist Party. His testimony went to the effect of what the Communist Party teaches and advocates. Therefore, according to this instruction, you must throw his testimony out of your memory because the witness did not testify that he knew the defendant or that the defendant read those books."

Mr. Abt: Of course we are going to argue that, that is the case, Mr. Parsons.

Mr. Parsons: I don't think that is the law.

Mr. Abt: How can you charge Mr. Lightfoot with knowledge of something that was never brought to his knowledge?

The Court: It must be brought to his knowledge some way or another, either by attendance at meetings or hearing speeches, that is your theory, I take it?

Mr. Parsons: Your Honor, counsel and I disagree
1250 about one thing, and I wonder if we could dwell on that for just a moment?

That is, that counsel wants to deprive the Government of any opportunity to put into evidence anything to prove the aims and objectives of the Communist Party without at the same time proving the connection by that testimony or that same document to the defendant.

It is proved by other documents, and other testimony, it is linked up.

The Court: There have been sheaves of evidence to the contrary in this case. I have not held you to proving by a certain document that he has certain knowledge generally.

Mr. Parsons: We acknowledge that, your Honor.

The Court: Well then,—

Mr. Abt: That is precisely why we are entitled to this instruction, your Honor.

The Court: I am going to give that, Mr. Parsons. No. 8. I think that is the law, isn't it?

Mr. Abt: It certainly is where I came from.

Mr. Parsons: I don't see where it is at issue in this case.

"The law does not make a member of the Communist Party responsible for the acts or statements
1251 of any other member merely because of their common membership in that organization."

The Court: Well, No. 9.

Mr. Parsons: I don't think this is law. I think that the jury may consider the books and writings along with all of the other evidence.

Mr. Abt: That is not our point here, Mr. Parsons.

Mr. Parsons: I think, though, that we have to, in order to keep the jury from having the wrong impression, we have to add to that,

"—but the jury may consider all or any books and

documents and papers in evidence in determining whether or not the defendant knew what the aims and purposes were."

Mr. Abt: But the jury, Mr. Parsons, the jury can only consider such books and documents in evidence that the defendant had knowledge of, that is the last instruction.

Mr. Parsons: The Judge has not said that. If that is what Instruction No. 8 means—

The Court: No. 9, counsel.

Mr. Parsons: Counsel just said that Instruction No. 7 means that the Judge has just said the jury may not
1252 consider any books and documents in evidence which have not been connected with the defendant directly.

Mr. Abt: I did not say that.

The Court: I don't hold that.

Mr. Parsons: I just told him that you didn't your Honor.

Mr. Abt: Mr. Parsons misunderstood me.

This instruction, your Honor, says that:

"The fact that the defendant used any book or writing in any school or class, or discussed such book or writing with some other person, or has read such book or writing, cannot, standing by itself,"—

The Court: Yes, I see that.

1253 Mr. Abt: So we have saved Mr. Parsons' point.

The Court: I don't see anything wrong with that, Mr. Parsons, not as long as that is in there, "standing by itself,"

We will go to Number 10.

Mr. Parsons: Your Honor, this says: "The opinion of any witness concerning the meaning of Marxism-Leninism and the aims and objectives of the Communist Party cannot be imputed or charged to the Defendant, and cannot be taken by you as evidence of the opinion of the Defendant, or as evidence that the Defendant's knowledge concerning the meaning of Marxism-Leninism, or the aims and objectives of the Communist Party, is in accord with such opinion testimony."

That is all right, provided we also have an instruction here, particularly where in a case where the only defense placed into evidence was the reading by the Defendant of certain documents, and the entire documents in evidence otherwise, and all of the testimony is that of the
1254 government, otherwise, "but the jury may consider any and all evidence in determining whether or not

the Defendant, using aims and objectives of the Communist Party," I think in each of these instructions that a number of them could be remedied by Counsel's placing in that one element, that one statement which would give the instruction fairness and make it possible for the jury to listen to the instructions on both sides without being able to discern whether it is an instruction by the Defendant or one by the Plaintiff.

Mr. Abt: That is an incorrect statement of the law, Mr. Parsons.

The jury cannot take into consideration in determining this man's knowledge, any evidence that is not connected up with him, that he did not have knowledge of. How can they do that?

They first have to find that he had knowledge of the evidence, and then they can consider it in connection with his knowledge.

That is the exact point about this instruction on opinion evidence.

Mr. Parsons: The jury may consider all of the facts and all of the testimony and evidence before them.

1255 The Court: You tell them that in one of your instructions, in more than one.

Mr. Parsons: I wonder if we could append our instruction to this to give it the fair clarity that it should have.

"The opinion of any witness concerning the meaning of Marxism-Leninism and the aims and objectives of the Communist Party cannot be imputed or charged to the Defendant, • • •"

We agree there, "• • • and cannot be taken by you as evidence of the opinion of the Defendant, • • •" —

The Court: I have added in here in chambers, "the opinion alone of any witness • • •"

Mr. Parsons: That will help a great deal, your Honor.

The Court: "The opinion alone • • •" I added that in there. I will give it in that form.

Now Number 11.

Mr. Parsons: Number 11, your Honor, says that the first sentence, "Moreover, the opinions expressed by

1256 any such witness are not binding upon the jury and the jury may reject any such opinions which they find are not well founded in fact."

I think in all fairness we should make every instruction one which will apply to both sides.

"The jury may accept or reject," I mean, where it is permissive, where it is up to the jury, that correction will make it a fair one.

The Court: That really is what they have a right to do.

Mr. Abt: That is right.

The Court: Wait a minute, I will amend that in just a minute.

Mr. Abt: "May accept?"

Mr. Parsons: "Or reject."

Mr. Abt: "Or reject any such opinions according as you may find" or "they may find."

The Court: "May reject or accept," is that about the third line from the last, is that what you have in mind?

Mr. Parsons: Yes, sir.

The Court: "May reject or accept."

Mr. Parsons: It would need a little verbal cor-
1257 rection a little farther on, to make it in the alternate.

Mr. Abt: "May reject or accept any such opinions according as they find them well founded or not well founded in fact."

Mr. Parsons: That is all right.

The Court: I probably will change that, I mean, where it says "jury" to "you," I will probably change that.

Mr. Parsons: I appreciate that.

Mr. Abt: Where are we, Judge?

The Court: We are on number 12, now. What about that, Mr. Parsons?

Mr. Parsons: Your Honor, I think that sentence Number 1 is unnecessary. I think that Number 3, which is the second sentence of the second paragraph, is untrue.

The Court: Which one?

Mr. Parsons: The first one is unnecessary. Then in the second paragraph, the second sentence is untrue.

"This burden cannot be met by evidence that a particular interpretation of Marxism-Leninism or of the
1258 aims and objectives of the Communist Party is the most correct or the most probable interpretation."

I think that is entirely incorrect.

I think, however, that the jury is to determine whether or not the government has met the burden. The burden is on the prosecution to prove that he has specific knowledge and specific intent.

Mr. Abt: The question, your Honor, is not which is

the most probable or correct interpretation, but which interpretation the Defendant had.

Again, it has to pin everything to the Defendant.

Mr. Parsons: I think in our instructions we ought to keep out such phrases as "Marxism-Leninism," otherwise we are instructing the jury in the evidence.

The Court: If you keep that out, where are you in this case?

Mr. Abt: We didn't bring in Marxism-Leninism, your Honor, the government brought it in. You have got no case without it.

The Court: I think I will strike out the first and the second sentences, and make it "A question of inter-
1259 pretation can be resolved • • •"

Mr. Abt: Strike out both paragraphs, your Honor?

The Court: That is correct.

Mr. Abt: Okay.

Mr. Parsons: That makes it okay, that makes it fair.

The Court: Now Number 13.

Mr. Abt: If your Honor please, coming back to Number 12 for just a second.

If you make that "a question of interpretation" I think it has to refer to something, "A question of interpretation of Marxism-Leninism."

The Court: I think that is correct.

Mr. Parsons: That is all right.

The Court: Isn't that a good definition of intent? That is Number 13.

Mr. Parsons: I think ours was a little better.

The Court: I will see which one I will give, one or the other, maybe both.

Mr. Parsons: I think your Honor's general instruction is much better than all.

The Court: I think I have covered that.

1260 Mr. Parsons: Here, I think this is a misstatement of law:

"In determining whether or not the Defendant had the intent charged in the indictment, you cannot consider the testimony with reference to the acts or statements of any person other than the Defendant himself, unless you are satisfied from the evidence that such another person was speaking or acting for and on behalf of the Defendant and with the Defendant's knowledge and consent."

It is not a misstatement of law, I don't want to say that, your Honor, but it does involve an issue which has not been in the case at all. I don't see where it is even necessary.

Mr. Abt: Sure it is in the case. You have got all kinds of third party declarations on actions in the case.

Mr. Parsons: "In determining whether or not the Defendant had the intent, * * *" in determining the intent, I think it is better to charge the jury that you can consider all of the evidence.

1261 Mr. Abt: But you cannot, where the evidence is not connected with the Defendant.

Mr. Parsons: You have the charge that the evidence must be connected. It only becomes repetitious.

Mr. Abt: Oh, no!

The Court: I think that is a good one, on intent. I will give it.

Mr. Parsons: Here, your Honor, Number 15, I believe it would be the proper instruction to give the jury an instruction as to clear and present danger.

The reason we did not prepare an instruction on that was that we were at a loss as to how your Honor would want to treat that small element of the case.

The Court: That is a question of law which I don't think the Jury has any right to know about.

Mr. Parsons: In other words, you would prefer not to instruct on that and you would determine that as a result.

The Court: That is correct.

Mr. Parsons: Under those circumstances, I think

1262 Number 15, which really, without using those words, goes into the question, is clearly improper.

Mr. Abt: It has nothing to do with the clear and present danger, and Judge Medinal in his instructions, said that to be legal it must be incitement to act, not merely an attempt to persuade or discussion and belief.

Every Judge in every Smith Act case has given this instruction, and it is embedded in Chief Justice Vinson's decision in the Dennis case.

Mr. Parsons: Every one of those other cases were conspiracy cases. This is the first one that is not, this one is really talking about clear and present danger.

Mr. Abt: This is the First Amendment—

Mr. Parsons: "* * * is reasonably and ordinarily calculated to incite persons to such action, * * *" that is the clear and present danger doctrine.

Under the circumstances that go on today, is his conduct—is his membership in the Communist Party such as would incite persons to action, I think that is clear and present danger action.

1263 Mr. Abt: It has nothing to do with clear and present danger.

Mr. Parsons: I think it is a matter of law for the Judge, not for the jury.

Mr. Abt: That instruction has been given in every Smith Act case.

The Court: I will think about it.

Number 16.

Mr. Parsons: "In and of themselves" is all right in the context, they may be used in certain contexts, so we should say:

"The words 'revolution,' 'destruction,' and 'overthrow' in themselves * * *" you would agree with that?

Mr. Abt: No objection.

The Court: "In themselves", in the first line?

Mr. Abt: Right, no objection to that.

1264 Mr. Parsons: Number 17, your Honor, I concede to the Court the interpretation that there is no presumption. knowledge continues from one day to the next, but I believe the Court will sustain me there is no general presumption knowledge ceases to exist. Counsel says there is no presumption a person will continue to engage in an activity previously lawful, after the enactment of a statute making such activity unlawful.

The Court: Isn't that the law?

Mr. Abt: I have got a couple of Seventh Circuit cases, but I didn't happen to bring them in this morning.

The Court: I think that is the law.

Mr. Abt: The presumption of innocence, and this would create a presumption of guilt.

The Court: The presumption of guilt, yes.

Mr. Abt: This is simply the language of the Schneiderman case, your Honor.

Mr. Parsons: Then I think that is all right, but I think the alternative should be given: "If you find the teachings," and so forth, "then you must find the Defendant guilty; if not—"

Mr. Abt: Don't you have such an instruction?

1265 The Court: I think you have.

Mr. Parsons: Your Honor, did you read the government's instruction?

The Court: I try to read them, so the same subject matter is read together.

Mr. Parsons: In other words, you will read them to counterbalance?

The Court: Yes.

Mr. Parsons: This is Number 18.

The Court: Now, Number 19.

I added in this line, although I have not passed on the instruction, "solely on the evidence," and I have added in "and the law."

Mr. Parsons: I thought your Honor had a better instruction as to charging the jury. We didn't write one.

The Court: If I have one.

Mr. Parsons: I think the Court's is much better.

Mr. Abt: Our only point on this one is, as your Honor obviously gathers, it seems to me there should be an instruction their prejudice against Communism should not enter into it.

The Court: You don't have that in here?

1266 Mr. Abt: Yes, I do. That is the purpose of the instruction.

Mr. Parsons: According to my memory, I think your Honor has an excellent one on that.

The Court: I don't think they go that far. I think they are entitled to an instruction as to Communism. I think the general acceptation about Communism is overthrow.

1267 Mr. Parsons: No. 20. I have no objection to No. 20.

The Court: All right.

Mr. Parsons: I disagree with the last sentence in there. It says:

"Therefore, your verdict in this case must not be influenced by or affected by your view as to the truth or falsity, the reasonableness or unreasonableness or the validity or ivalidity of the opinions expressed by the defendant or the Communist Party."

We are entirely concerned here with the opinions of the Communist Party as taught to the public.

The very fact of that causes it to be incorrect. I think the jury should consider whether or not those opinions are true or false or reasonable or unreasonable or valid or invalid.

Mr. Abt: I think we could make that "such opinions."

Mr. Parsons: Would that help it?
The Court: Where is that?
Mr. Abt: The last line.
The witness' right to criticize the foreign policy of the United States and the role being played by the United
1268 States in international affairs, and so forth.
Mr. Parsons: Your Honor, may I make one other suggestion in this instruction about protection?
In this instruction the defendant says,
"Defendant, in common with all other persons living under our Constitution, has the right protected by the First Amendment to criticize the Government and its policies even though such speaking or writing may undermine confidence in the government."
We know that, and that has not been placed in issue, and the defendant has not placed that in issue. The defendant said nothing about that in the case except in his opening statement.
This is to place it in issue. It is the same thing as the right to criticize the Government. That has not been placed in evidence, and it is only confusing the jury.
"Criticizing the foreign policy of the United States."
In other words, using the instructions to the jury as a means of channeling to the jury the suggestion that the defendant is only criticizing the foreign policy and
1269 complaining of the role the Government has in international affairs, that all he is doing is exercising his right of freedom of speech.
The defendant had the right to put the defendant on the stand and let him say that, but he didn't, and now the Government should not have to come back after the case is over and channel to the jury instructions containing a possible defense.
The Court: What do you say to that?
Mr. Abt: I think it should go in, your Honor, for the reasons I have indicated. I think Mr. Parsons has got one valid point.
The Court: Of course this is a matter you are talking about, the law generally, and I don't think it has been in this case.
I don't think I will give that one.
Mr. Crockett: All the forums and so forth.
Mr. Parsons: If Counsel could state it generally.
The Court: It was given in Schneiderman, in that case.

Mr. Parsons: This was?

The Court: Not as to whether or not you agree with these opinions. They are talking about the Con-
1270 stitution.

Mr. Parsons: Of course, in Schneiderman, the witnesses—

Mr. Abt: The Government read into evidence these things.

Mr. Parsons: It is not in evidence.

Mr. Abt: Let me finish.

Mr. Parsons: I am sorry.

Mr. Abt: The Government read into evidence the writings of Mr. Lightfoot, in which he criticized the Government and that is covered here.

Mr. Parsons: We read into evidence certain matters.

The Court: In that form I will refuse it. If you want to bring in another instruction—

Mr. Abt: I can suggest a change. I am not sure I understand your Honor's criticism but the validity or invalidity of such opinions expressed by the Communist Party, but only on the law and evidence in this case.

Mr. Parsons: I am not so sure about the validity or invalidity of any opinions expressed of the Communist Party. Then you suggest to complete it as it is and let it go in that way, and not go into the foreign policies of the United States?

1271 The Court: Of course it is difficult to get away with, because that is the law.

Mr. Parsons: The First Amendment is a law.

The Court: Yes.

Mr. Parsons: But why should he cite the First Amendment in that instruction?

The Court: That is one of the reasons I refused it in the first place.

Mr. Abt: If I know on what ground your Honor criticized it, I will be able to change it very easily.

The Court: I am refusing it on the ground I don't think you have the right to tell this jury there is nothing in evidence to tell them how they are entitled to believe or what they are entitled to believe or how they are entitled to express it or how they are not.

1272 No. 22, now.

Mr. Parsons: We have no objection to that, your Honor, except I think a general instruction from the Court would be better.

The Court: I think so.

Mr. Abt: You will give one like that?

The Court: I think so. If I don't have one, I will get it.

Mr. Parsons: This No. 23 is all right, except I reviewed this in connection with your Honor's, and I think your Honor's is better except it does not go into the Communist Party, no connection with the F.B.I. or Government agents or employees.

The jury may consider it.

The Court: There isn't any evidence in this case about a possible conviction. There is no evidence here in this. You asked that question, but that was in a conspiracy case in Seattle or some place west.

Mr. Parsons: Yes, that is right.

Mr. Abt: I am sorry, your Honor. I don't get you.

The Court: This instruction is not in this case, as I recall it.

Mr. Abt: Sure, it is. If we understand each other, your Honor.

1273 The Court: What do you say?

Mr. Abt: If we understand each other.

First, a number of witnesses did enter the Communist Party at the request of the F.B.I., and Lautner is presently employed by the Department of Justice.

The Court: Yes.

Mr. Abt: The instruction merely asks the jury to consider the matter of the witness' interest.

The Court: You go further than that. You say, "Some personal benefit to themselves."

Mr. Abt: Yes, certainly, continue to hold a job, like Lautner.

The Court: I don't think that is good in that form. I will refuse it.

Mr. Abt: Beg pardon?

The Court: I will refuse it in that form.

Mr. Parsons: In addition, the Government has an interest.

The Court: Now No. 24.

Mr. Parsons: If counsel will agree to the change of the word "should" to "may" we will have no objection.

The Court: In 24?

1274 Mr. Abt: Yes, change "should" to "may consider."

The Court: Is that the third line?

Mr. Abt: Yes. O. K.

Mr. Parsons: No objection to that.

1275 The Court: Now, Number 24. No, Number 25.

Mr. Parsons: We have no objection to Number 25. I believe that is covered by general instructions of the Court.

The Court: It may be or may not. If it is not, I will give it. I think it is.

Mr. Parsons: We have no objection to Number 26, which is a general instruction that your Honor always gives.

I think Number 27 is repetitious of a very excellent general instruction of your Honor's. I have no objection to it other than that.

Mr. Abt: As I say, your Honor, we of course prepared these hurriedly.

The Court: I beg your pardon?

Mr. Abt: We prepared these without knowing what your general instructions were.

The Court: I will mark this "given," but if it is covered—

Mr. Abt: All right.

Mr. Parsons: Number 28 and Number 29 we feel are all covered by general instructions of the Court. We have no objections to them, other than I think the instruc-

1276 tions of the Court are, the ones I know about, are very good.

The Court: I think I will give it if it is not covered.

Mr. Parsons: You will give it?

The Court: Yes. Sometimes I give an instruction on that.

Mr. Parsons: Now, your Honor, on the ones the government will revise, will it be satisfactory if we make the revision and submit a copy to Counsel by three o'clock today, and to the Court?

The Court: Three o'clock today?

Mr. Parsons: Yes.

The Court: That will be all right.

Mr. Abt: We have one or two.

Mr. Parsons: Counsel is welcome to use our office for that purpose.

Mr. Abt: Thank you, but we will use our own.

The Court: You will have an hour and a half each for argument.

Mr. Abt: Let me get your schedule, your Honor.
1277 That means the government will start Tuesday morning, three-quarters of an hour?
The Court: That is up to you, how long you want to take.
Mr. Abt: The government?
The Court: He may take it all if he wishes, and have no closing.
Mr. Parsons: If the two brilliant gentlemen come in and each take forty-five minutes, your Honor?
The Court: I don't know. I don't see how that is—that is up to you.
Mr. Abt: That is all right, but I thought I understood you to say Mr. Parsons would have Monday morning, and both of us would have the next. That is the entire defense argument. I am not entirely clear, your Honor.
The Court: No. Monday morning, and use up the time they want to use up.
Mr. Abt: Right.
The Court: Then I think I will suspend.
Both of you are going to argue?
Mr. Abt: That is correct.
The Court: Let one of the Counsel use up what
1278 time he wants to in the afternoon, and then you go over until the next morning, and I want to send the case to the jury around noon.
Mr. Parsons: Then how much of it after Counsel has completed?
The Court: That is up to you. Yes.
Mr. Parsons: The Jury will be out by one o'clock?
The Court: They should be. It of course takes a little time to read the instructions.
Mr. Abt: An hour and a half?
The Court: Yes, an hour and a half. I think that is sufficient.
Mr. Abt: I think we can make it.
The Court: You don't need to talk that long, if you don't wish to.
Mr. Abt: I fully understand, your Honor.
The Court: Monday.
1279 Mr. Abt: Judge, I wonder if I may take just another moment?
In discussing with Mr. Crockett your view on our proposed instruction No. 21, neither of us is really clear as

to why you think it is bad, and in what form you would accept it, in what revised form.

That is the first amended instruction on the views.

The Court: While it is the law, I don't think it is in this case.

Mr. Abt: It is in this case in this sense, that the articles Lightfoot wrote which the Government read to the jury, do include some pretty sharp criticism of Government policy, domestic and foreign, and those articles are going into the jury room, and I think under those circumstances we are entitled to an instruction that the jury should not consider this in its verdict.

The Court: Is that a fact, Mr. Parsons?

Mr. Parsons: I don't see it. There are some discussions in his writings, indeed, and in articles of the Party, criticizing the Government, but that is part and parcel of this entire attitude concerning the aims of the Party, and in no way concerns freedom of speech.

1280 Everyone knows there is freedom of speech here.

The Court: But if you say it goes to the jury, papers criticizing the Government as to domestic policy, or whatever else, that of course means he has a perfect right to it is well as any other citizen.

Mr. Parsons: As I told counsel at the outset, I would have no objection to an instruction that a person has a right, if he wishes to do so, to make any criticism of the Government, but to go ahead with certain ideas such as "the role being played by the United States in international affairs," and to praise the foreign policy of other governments, I think then that is to call the jury's attention to a possible defense which has not been placed in evidence here.

That, I think, is unfair. If he wanted that, to stick to the language, we would be very foolish to object, but I don't think it is in there.

The Court: You can argue that to the jury. I presume it to be backed up by some law

You couldn't very well say to the jury: "You 1281 can't criticize people who talk against our Government," because it is done every day, and it is done in the halls of Congress.

Mr. Parsons: On the other hand, your Honor, if that is part and parcel of their advocacy of the overthrow of the Government, we don't want the jury to discard it because of an instruction.

The Court: I don't think so.

Mr. Abt: The instruction does not say that.

The Court: I think you can form it as Mr. Parsons has outlined.

Mr. Abt: The only reason we single out the specific thing is because those are the matters covered.

The Court: Then he has a right to cover it in an instruction.

Mr. Parsons: I can conceive if the defendant in common with all other persons living under our Constitution, that he has the right to protection of the Amendment to criticize the Government or its policies, to say, "to criticize the Government" and leave it at that.

The Court: In the Schneiderman case it goes further.

Mr. Parsons: When he goes farther and says, 1282 "Even though" I believe that seeks to underline.

He is going to the fact of the case.

Mr. Abt: "Undermine confidence in the Government." It goes on in Congress every day of the week.

Mr. Parsons: But they don't seek to undermine confidence.

Mr. Abt: This does not say "seek."

The Court: I don't think I will permit you to go that far.

Monday.

(Whereupon an adjournment was taken in the above-entitled cause to Monday, January 24, 1955, at 10:00 o'clock, a.m.)

1283 Before Hon. Philip L. Sullivan, Judge, and a Jury.

Monday, January 24, 1955,
10:10 o'clock a. m.

Court met pursuant to adjournment.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government; Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

(The following proceedings were had out of the presence and hearing of the Jury:)

1284 Mr. O'Donnell: Your Honor, there are two preliminary matters that I would just like to bring up at this moment.

One is in regard to Court Exhibits Numbers 1, 2, and 3, those are Court Exhibits.

Those were the three reports of the meetings testified to by the witness Czarnowski, and the Court ruled in regard to those that the Government did not have to produce them for inspection by the Defendant.

The Court: That is right.

Mr. O'Donnell: In regard to those, we would like to have permission to either make a typewritten copy or photostatic copy of those and enter them under seal in the Court's records in this case.

The Court: That is all right.

Mr. O'Donnell: Secondly, as a result of examining the record in connection with the Government's Exhibits, we would like to make a motion to in effect clarify the record if the record needs any clarification in connection with Government's Exhibit Number 23, which is "State and Revolution."

We feel that there is no question on the document, but just to be absolutely sure on it before beginning closing arguments, we would like to say this:

1285 With regard to that document, that is, "State and Revolution," Meyer testified in this transcript, at page 158, that is, the witness Meyer, that he had discussed that Exhibit with Mr. Lightfoot, the Defendant, in detail;

that, at the transcript, page 159, the Court reserved his ruling on the question of whether or not that Exhibit should be admitted with regard to the Defendant's knowledge.

At transcript 216, Meyer was again questioned concerning that particular Exhibit, and he testified that he had discussed particular pages of that Exhibit with the Defendant.

At that time, or shortly thereafter, that Exhibit was offered once again as to those particular pages which have been discussed.

Then the witness Lautner took the stand, at page 482 in the transcript, and the book was entered—was tendered on the question of aims and purposes of the Communist Party, and at transcript page 483—that is, page 482, all of the books that were identified in connection with the Defendant as to his knowledge by the witness Meyer were offered.

There was then at transcript 483, Mr. Parsons,
1286 who was making the tender at that time, stated in making his tender that only those parts of the Exhibit are being submitted which are not duplicitous.

I might add also at page 438 in the record that witness Lautner identified particular pages of that Exhibit.

At transcript 440 an offer was made as to "State and Revolution," Exhibit Number 23, which was precisely—I think there is a possibility of one slight change in page—which was precisely the same offer as made in regard to that book under Meyer's testimony in the transcript at 216.

Therefore, it would appear, or it does appear, in the record, that the exact pages were offered through Meyer or through Lautner, Meyer first, of course, as to the Defendant's knowledge, and Lautner as to the aims and purposes of the Communist Party.

Then on transcript 488 and 489 there was a tender made and reception of all documents identified through the witness Meyer.

We feel, your Honor, the Government submits there is no question but that the document in question, Exhibit Number 23, is entered for all purposes, and that knowledge of the Defendant, as well as the purposes, has been
1287 completely identified on several occasions, with the Defendant, and we just brought this matter up just

to be sure the record was clear at the time of closing argument.

Mr. Abt: I think the record is clear, your Honor, the only question is as to whether, I take it, what Mr. O'Donnell is doing now, is making a motion for a revision of the record or correction of the record, or a new motion of some description.

We went over all of the Exhibits, your Honor, over the week-end, in an attempt to find out just what their status was, and the record is perfectly clear that as it now stands, with reference to three Exhibits, "Foundations of Leninism," "State and Revolution," which Mr. O'Donnell mentioned, and an article entitled, "On The Struggle Against Revisionism," that the particular pages of those three Exhibits were offered only, or were received, rather, only in connection with the testimony of the witness Lautner, and that your Honor stated at the time that they were received solely for the purpose as on the
1288 issue as to whether or not they supported Lautner's so-called "expert opinion."

None of those three documents was re-offered subsequently by the Government into evidence for all purposes.

There is no question as to what the record says. The record says that those three documents were admitted for the limited purpose of their bearing upon Mr. Lautner's testimony.

1289 And it seems to me, if your Honor please, that the Government comes too late now to move that these exhibits be admitted for all purposes.

The Court: The Court will stand on its ruling.

Mr. O'Donnell: Your Honor, with regard to those exhibits, then our position is that they are admitted for all purposes because they were tendered in the record, the afternoon before your Honor—

The Court: I didn't say so.

Mr. O'Donnell: Yes, your Honor, you said they will be received, if you recall.

The Court: I said this, that if there are any documents that I had passed on there, or such in effect, that if the record wasn't clear, that they may be received in evidence, but any that I just limited as to admission, that may stand.

Mr. O'Donnell: Our position is that we are not limited.

The Court: Well, if they were not, the record shows it.

Mr. O'Donnell: I would like just to point out one other thing, your Honor, in regard to that.

At the end of Lautner's testimony or towards the end of it, Mr. Parsons tendered all exhibits that were identified.

1290 The Court: I remember that.

Mr. O'Donnell: That went over to the next day, and then at the conclusion, referring to all the exhibits identified through Meyer, your Honor stated that they may be received.

The Court: That is right, they may be received subject to what they were offered for or subject to my ruling at the time they were offered.

Mr. Abt: I won't go into it any further then, your Honor.

The Court: What instructions do we have here?

Mr. Abt: We have two that we re-submitted, your Honor, and the whole series that the Government re-submitted.

The Court: Well then—

Mr. Abt: Which are you talking about?

Mr. O'Donnell: Excuse me, your Honor, I want to get my notes on this.

Mr. Abt: Which do you want to take first, your Honor?

The Court: I will take the Government's.

No, I think you only have two.

Mr. Abt: We only have two, your Honor.

The Court: I think I will take up those two instructions.

1291 Mr. Abt: Which do you have first, your Honor?

The Court: Now "R," that as I understand it is all right—

Mr. Abt: "R," is that it?

The Court: Your "R."

Mr. Abt: We have no "R," your Honor. We have numbers. You have the Government's exhibits there.

We have two. No. 21 is revised and an alternate is No. 4.

The Court: That is right.

Mr. Abt: No. 21 as revised, was that First Amendment instruction, your Honor, and Alternate 4, you will recall, is on our theory as to knowledge by or advocacy, rather, by the members. Our original instruction referred to a majority of the members, and I gathered from what your Honor said you did not agree with our theory as to a majority.

The Court: That is right.

Mr. Abt: So we re-submitted it, referring rather than to a majority, to a substantial portion of the members, for your Honor's consideration.

The Court: I still think it is bad. That is No. 4, is it not?

Mr. Abt: Yes, sir.

The Court: I will refuse that.

1292 Mr. Abt: Your Honor, may we object to your refusal?

The Court: That is correct. That is my ruling all the way through.

Mr. Abt: I understand that, your Honor, but I want to preserve our record on it.

The Court: Now as to No. 21, I take it there is no objection.

Mr. O'Donnell: Yes, your Honor, we have objected to that on the ground we see no material change from the original No. 21.

Now in this connection, with this instruction, I would like to refer to the case of *United States* v. *Schneiderman*, cited at 106 F. Supp. 906, at page 935.

In that case there was a similar instruction given by the Court, that is Judge Matthis.

Apparently this instruction has been somewhat based on the fact of that instruction as well as the instruction itself.

Now I would just like to quote briefly from it. It is the second paragraph:

"The right of the defendants to enjoy such freedom of expression is unaffected by whether or not the opinions spoken or published may seem to you to be crudely
1293 intemperate, or contain falsehoods, or to be designed to embarrass the Government. No inference of conspiracy to advocate and teach the necessity and duty of overthrow and destruction of the Government of the United States by force and violence, or intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, may be drawn from such expressions alone."

The Court: That isn't this instruction.

Mr. O'Donnell: Pardon?

The Court: That is not this instruction.

Mr. O'Donnell: That is true, your Honor.

However, we think that basically it is the same instruction, it is an instruction of the First Amendment.

Now under the working of this present instruction, the jury might reasonably infer that they are precluded completely from considering the opinions of the defendant on various things.

They, of course, cannot be governed by opinions that
the defendant may express on matters which are
1294 not in the issues of the case However, they
are not completely precluded from observing the defendant and evaluating his opinions on any number of things that may come up in the case.

Our point in this, however, that under the instruction, the jurors are limited more than the law requires. In other words, they can to some degree consider these things, but they cannot be bound by them or let them play a majority role or rather an important role in the opinion—or the verdict they may return. That is our point, and I think that is the real advice of this.

The Court: I think they are entitled, in view of the fact he may express an opinion, and the Party, as the case is, the majority of it, to what was contained in Leninism and Marxism, as to the expression that they used, then the defendant has a right to make that, to instruct as far as that point is concerned to the jury. I will give that.

Mr. O'Donnell: We just wanted to suggest a limiting word such as "alone" or a word that would in some respects—

Mr. Abt: It just does not fit in the way this instruction is drawn up, your Honor.

Mr. O'Donnell: Our position is that it should be
1295 instructed along the lines it would not completely
limit the jurors on that question.

Mr. Abt: It seems to me, your Honor, that the instruction is perfectly correct, that the jury cannot conceivably infer that the defendant knew about advocacy of the overthrow of the Government by force and violence from the fact that he is opposed to American foreign policy.

The Court: I will give it in this form.

Mr. Abt: All right, thank you, sir.

The Court: Now let's see as to the Government's there were corrections on instructions A, B, C and R.

Mr. Abt: No, your Honor, that is not quite correct.

"A", we have no objection to that.

The Court: You have no objection?

Mr. Abt: No objection.

"B", there is a correction which I called to Miss Shaw's attention and I believe she called it to Mr. Parsons' attention, and I belive Mr. Parsons agreed—I couldn't get Mr. Parsons on the telephone Saturday.

Have you revised "B" since?

Mr. O'Donnell: No, I think not.

Mr. Abt: What we are suggesting, your Honor
1296 along the line that I suggested on Friday; and that your Honor agreed to, that I thought the Government had also agreed to—

The Court: Wait a minute, I have not located it yet.
1297 Mr. Abt: Do you have a copy of the instruction?

Mr. O'Donnell: I don't believe we have another copy with us, your Honor.

Mr. Abt: While we are waiting, may I ask a question as to your practice here? I don't want to be caught again, as an out-of-state lawyer, doing something that you don't do here.

The Court: I beg your pardon?

Mr. Abt: I want to make an inquiry as to your local practice on the instructions. Is it sufficient for me here at this time to object to the granting of the instruction or the failure to grant, or should I, after you have instructed the jury, state my objections?

The Court: I have always considered it sufficient if you make your objection here.

Mr. Abt: Because it is our practice normally in New York to make the objection and repeat the objection after you have instructed the jury; but if your Honor feels that that is not necessary, I shan't repeat the objection.

The Court: I take it the same objection would be made?

Mr. Abt: Exactly the same objections, of course, your Honor, but I just want to be sure that my record
1298 is in shape.

Here we have "the Communist Party was a group, an assembly of persons"—

The Court: "B"? I have that marked "Given."

Mr. Abt: I am sorry, your Honor, but I think there must be a small change, which I think we agreed on.

The Court: What is it?

Mr. Abt: The sixth line from the bottom of the page,

your Honor, "and that throughout that period he knew that the Communist Party—". There should be inserted "was a society, group, or assembly of persons who taught and advocated—" and "thereby" should go out in the third from the bottom line.

It is the same point I made before and your Honor ruled with me, I think.

The Court: I changed "this" to "the" in that instruction.

Mr. Abt: Yes.

The Court: Now what is the other change you want?

Mr. Abt: The sixth line from the bottom, "he knew that the Communist Party," and then insert after that "was a society, group and assembly of persons who taught and advocated—". It is the language of the statute, and Mr. Parsons agreed that he would make that
1299 change all through his instructions, and he failed to do it here.

The Court: I think that is correct.

Mr. O'Donnell: I might point out, your Honor, those very words are already in the very same instruction. Those are the words of the indictment, it is true; however, the jury will have the indictment read to them, and I really think that the constant repetition of these same words over and over again will be more confusing than helpful.

Actually the purpose of these instructions is to assist the jury in understanding the indictments, as far as the law is concerned, and for that reason I think it is a repetition.

The Court: I think it will do no harm. You may insert that; the defendant may insert that.

Mr. Abt: The "thereby" should also go out.

"The Communist Party was a society, group and assembly of persons who—"

insert after "Communist Party—"

The Court: Pardon me, just one moment.

All right, you may proceed.

Mr. Abt: On "C", your Honor, there are two
1300 things.

First, as I pointed out on Friday, this instruction speaks of only two of the three elements of the indictment, —that is membership and knowledge; it makes no reference to intent.

I understand on Friday that Mr. Parsons had agreed

that he would add the third element of the intent to the instruction.

It says, "Before you may find the defendant guilty, you must find that the Communist Party taught and advocated; that the defendant was a member, and that he knew—"

But there is no reference to his intent, and if intent is one of the elements of the crime, then obviously it should be in.

The Court: What do you say, Mr. O'Donnell?

Mr. O'Donnell: This instruction, your Honor, goes to the question of knowledge. Now we have a whole series of instructions here, your Honor, and as I just pointed out in the last one, we are repeating the same verbiage—

1301 The Court: I think they have intent in several of them.

Mr. O'Donnell: I think so, your Honor.

Mr. Abt: But if your Honor pleases, this instruction has nothing to do with knowledge, it is just a recapitulation of the elements of the crime. If it said something about knowledge after it was all done, it would have some point, but it doesn't, it says:

"Before you find the defendant guilty, you must find from all of the evidence beyond a reasonable doubt—" three things instead of four, that the Communist Party taught and advocated something, that the defendant knew something, and that the defendant was a member.

The Court: Where do you say that insert should be? I know we discussed it on Friday.

Mr. Abt: At the very end, your Honor, "and intended to bring about such overthrow as soon as circumstances permit."

The Court: You may add that at the end.

I will give that one with the modification.

Now "E", is it?

Mr. Abt: "D", your Honor.

The Court: What about "D"?

Mr. Abt: On "D", your Honor, we objected on

1302 Friday and your Honor overruled my objection. I don't want to re-argue that except to note my objection to the instruction; however, there is one small change I think we all would agree has to be made.

It starts "Before you find the defendant guilty,—" and it should be "Before you can find the defendant guilty—"

Mr. O'Donnell: I will concede that.

The Court: All right.

I don't locate that right at the minute.

Mr. O'Donnell: We can provide you with an extra copy of that, your Honor.

The Court: All right.

Mr. Abt: Now on "E", your Honor, I objected to it the other day, and I don't think that the revision has in any sense cured the objection. I have some suggested language changes which I think would help to cure it, if you want to hear me on it.

The Court: What is it?

Mr. Abt: Well, this language that they have here now —"In order that the aims and objectives of the Communist Party include the overthrow and destruction of the United States Government—" It doesn't mean anything to me at all, and I think it is badly worded.

I would change it to say: "In order to consti-
1303 tute—" If your Honor will read what goes before, I think it will make some sense.

"In order to constitute such statements, advocacy of the destruction and overthrow of the Government by force and violence—" It will then read:

"The words 'overthrow by force and violence' were not words of art which must be stated by the Communist Party or any of its members or by the defendant in order to constitute such advocacy."

The Court: That is "E" now?

Mr. Abt: That is "E" that I am talking about now.

The Court: What do you say about that, Mr. O'Donnell?

Mr. Abt: I have a few more changes.

Mr. O'Donnell: Well, I am in the position that he was in, now I don't understand what he means after his changes go in.

Mr. Abt: I think I understand their point, you don't have to use the words "force and violence" in order to use the word "advocacy."

The Court: I think that is what they mean by this instruction.

Mr. Abt: I think it is.

1304 The Court: And I think the instruction so states.

Mr. Abt: The way it stands?

The Court: As it stands.

Mr. Abt: May I make a couple of other changes, then, your Honor?

Well, let me do this, instead of trying to work it over, your Honor, as I don't want to take the time: If your Honor is inclined to give it, let me simply object and let it stand.

The Court: All right.

Now take "F."

I have a note here that it is covered.

Mr. Abt: I think it is covered, your Honor, and the way it is worded here. I think it is not correct. It ends up:

"If you find the defendant has committed an act which constitutes the crime in this case—"

Well, the act doesn't constitute the crime in this case, it is the act plus knowledge and intent.

1305 Mr. O'Donnell: Well, if I indicate—if it just referred to knowledge and intent—

The Court: I see that, but I think you have that covered.

Mr. O'Donnell: I think it may be covered previously, your Honor.

The Court: I will refuse it as covered.

Now we come to G.

Mr. Abt: In G, I have a change that I would like to suggest, your Honor. It warns of:

"—the Government has satisfied its burden in this respect—" but you can't tell in what respect, and I would like to, since the whole instruction deals with knowledge and not intent,—I would like to make that read:

"—the Government has satisfied its burden in respect to the Defendant's knowledge of such teaching and advocacy."

The Court: I think that is what it means, and you may add that to it.

Mr. Abt: Just one other thing on the same instruction, your Honor—

Mr. O'Donnell: I think the Court should see it while we are discussing it.

1306 The Court: Where is this?

Mr. Abt: The fourth line from the bottom, your Honor, "with knowledge—" instead of "with knowledge that it taught—" it should be "with knowledge that it was a society of persons who taught—"

It is the same point that runs all the way through these things.

The Court: Well, I will give that in its present form. Now I—

Mr. Abt: I think "I" is bad, your Honor, in a whole series of respects. It doesn't make any reference to reasonable doubt, but permits the jury to make an inference without limiting that inference to the question of the matter of reasonable doubt, and the instruction as worded, your Honor, either permits an inference of guilty knowledge from perfectly innocent acts, or it assumes that the Communist Party has engaged in guilty acts; I don't know which it is.

The Court: Well, the other day I put a note on here, and I still adhere to it, that I think the instruction is bad in that form.

It will be refused.

Mr. O'Donnell: Your Honor, the purpose of that
1307 instruction, of course, is—

The Court: I understand the purpose. I understand the purpose, but I don't think the instruction is good.

Mr. O'Donnell: May we resubmit that, your Honor?

The Court: No, this is the final discussion.

Mr. O'Donnell: I might suggest—

The Court: I think that the import of your instruction is covered anyway.

Mr. O'Donnell: All right, your Honor.

Mr. Abt: On "J," your Honor, I suggested the other day that the first sentence should be stricken. It is utterly meaningless, "the Defendant need not teach and advocate—"

The Court: Yes, I thought I did strike that.

Mr. O'Donnell: There was considerable striking until we got down to that point, and I think we checked that with the record, and there was a paragraph in that sentence, in the other one—

Mr. Abt: You have that confused with another instruction. The old instruction started just the way this does.

The Court: The first sentence may go out.

Mr. Abt: Further than that, your Honor, there
1308 should be a reference to "beyond a reasonable doubt—"

It should be "if you believe from the evidence beyond a reasonable doubt—"

The Court: "That the Communist Party—"

Mr. Abt: That is right, sir, and again, down about the fourth line, "and if you believe beyond a reasonable doubt that the Defendant was a member—"

Mr. O'Donnell: I think "beyond a reasonable doubt the Defendant was a member—" I think that is a point conceded in this case.

Mr. Abt: No, no; that is not your instruction. This says, "The Defendant had knowledge that it taught—"

The Court: Where is that?

Mr. Abt: About the fourth line, your Honor, "and if you believe"—

The Court: Oh yes.

Mr. Abt: "If you believe beyond a reasonable doubt that the Defendant was a member with knowledge that it taught and advocated—"

The Court: That must be plain all the way through.

Mr. O'Donnell: I don't think there is any question, your Honor, on membership. Mr. Abt has stated on a
1309 number of occasions to this jury—

Mr. Abt: It doesn't go to membership, it goes to membership with knowledge.

Mr. O'Donnell: Wait a minute.

"And if you believe the Defendant was a member of said party, comma—"

The Court: Yes.

Mr. O'Donnell: How can he believe beyond a reasonable doubt? Why is it necessary for the jury to believe beyond a reasonable doubt when that fact is admitted in this case?

Mr. Abt: No, you don't read the whole thing.

The Court: No, you don't stop there. If there was a period there, it would be different, but you don't stop there, you go further.

That should be added.

Mr. Abt: And one other thing should be added.

The Court: Wait a minute.

"If you believe—" After "believe" is it?

Mr. Abt: Yes, your Honor, "beyond a reasonable doubt."

The Court: Yes.

1310 Mr. Abt: And then next, your Honor, the instruction leaves out the element of intent.

The Court: That is which one?

Mr. Abt: The same instruction leaves out the element

of intent; it refers only to knowledge, but not intent. I submit that after the words "—with knowledge that it taught and advocated the overthrow and destruction of the Government of the United States by force and violence, as soon as circumstances permit, and if you believe beyond a reasonable doubt that the defendant had the specific intent required, then it is not necessary—" and so forth.

But the Government states all of the elements of the crime except intent in each of these cases.

The Court: That is an element, of course, Mr. O'Donnell.

Mr. O'Donnell: Yes.

The Court: Well, I think you can add that in there.

Mr. Abt: "As soon as circumstances would permit, and if you find beyond a reasonable doubt that the defendant intended to bring about such overthrow as soon as circumstances would permit—"

The Court: The modification will be given. Now we go to "L."

1311 Mr. Abt: On "L" there are several things, your Honor.

The first thing is that on Friday—

The Court: Are you talking about "L"?

Mr. Abt: Yes, your Honor, and your Honor specifically stated that the words "from the evidence in the case," on the third line, should be stricken for the reason that you can't infer intent from all of the evidence in the case, but only from such evidence of facts which were brought to the defendant's knowledge.

I checked the transcript on that, your Honor, and you specifically stated that those words should go out.

The Court: That is "from the evidence in the case?"

Mr. Abt: That is right.

Mr. O'Donnell: What else are they going to—

The Court: I was just going to ask where else do they find it?

Mr. Abt: I think if that language is to be in there, your Honor it seems to me it must be limited to the evidence of which the defendant had knowledge, because obviously you can't infer intent from something that the defendant didn't know about, and there is a lot of evidence in this case on matters which concededly never came

1312 to the defendant's knowledge.

The Court: Well, that is a part of it, isn't it?

Mr. O'Donnell: Pardon me, your Honor?

The Court: I say, that is a part of the evidence. what he had knowledge of.

Mr. O'Donnell: It is a question for the jury to decide whether or not he had knowledge of it.

The Court: I think that "all" should be in there; "from all the evidence—"

Mr. Abt: In addition to that, your Honor, then there is no reasonable doubt here. I am sorry, there is at the end.

The Court: Yes.

I will give it.

Mr. Abt: May we object to that instruction, your Honor?

The Court: Oh, yes.

Mr. Abt: May the record show that we object?

The Court: Yes.

Now take "Q?"

Mr. Abt: "O," your Honor.

1313 The Court: What is "O?"

Mr. O'Donnell: I have a note here, your Honor, that no corrections were necessary on the Government's instruction.

The Court: "O" is all right.

Mr. Abt: That is not correct, your Honor. There is a very, very vital correction that is necessary.

If you have "O" before you, I mentioned it to Miss Shaw over the 'phone, and she mentioned it to Mr. Parsons.

"Teaching and advocacy of the overthrow of the Government of the United States by force and violence as soon as circumstances would permit—"

That is completely omitted here.

The Court: You didn't make that comment the other day, but it is all right.

Mr. Abt: I am sorry.

The Court: You didn't make it the other day.

Mr. Abt: I am sorry I didn't.

The Court: Because the record so shows.

Mr. Abt: I called it to Miss Shaw's attention and to Mr. Parsons' on Saturday, your Honor, and it was an obvious oversight on my part, if I didn't call it to

1314 your Honor's attention.

The Court: What is your suggestion?

Mr. Abt: After "teaching and advocacy—" insert "of the United States by force and violence as soon as circumstances permit."

Mr. O'Donnell: I just heard this, and I would like to take a quick look at it again, your Honor.

Well, I think all of these instructions are characterized in the language of the indictment. I think once again we have been over this same ground.

The Court: "As soon as circumstances permit—"

Mr. Abt: "As soon as circumstances would permit—" That is the language, your Honor.

The Court: I will modify that and give it.

Mr. Abt: Now, if your Honor please, may the record show we object to this instruction?

The Court: Yes.

"Q?"

Mr. Abt: If your Honor please, we discussed this at some length on Friday.

The Court: Yes, I remember.

Mr. Abt: And again we have the problem where the jury is, under this instruction, to be instructed that they can consider "by interpretation given in testimony 1315 or in documentary evidence as to whether the defendant knew the character of the Communist Party."

Now again, obviously they can't consider interpretations of testimony or documentary evidence that never came to the defendant's knowledge on the issue of his knowledge.

Mr. O'Donnell: I might add, your Honor, that in this case there is very little in the case that wasn't attributed directly to the defendant's knowledge.

Mr. Abt: There is a great deal, and particularly there is the testimony of the expert Lautner and what he said about all of these books. That is your whole case, and there is absolutely no connection between that testimony and the defendant here.

This, in effect, your Honor, is contrary to another instruction that you have given at our request that you can't impute opinion testimony to the defendant unless it is shown that he had some knowledge of it.

The Court: I think that is the law, too.

Mr. Abt: That is the law. I think that is the law where I came from, your Honor.

1316 The Court: Yes, I will refuse that in that form.
Mr. Abt: "R" is O. K., your Honor, no objection.
The Court: I think that is all.
It looks like we have gone over all of the instructions for the Government and the defendant.
Mr. Abt: Yes.
The Court: Now who is going to make the remarks this morning?
Mr. O'Donnell: Pardon me?
The Court: Who is going to open for the Government?
Mr. O'Donnell: Mr. Parsons.
The Court: And how long will you take, Mr. Parsons?
Mr. Parsons: Approximately an hour; maybe a few minutes one side or the other. I can't time it exactly.
The Court: Yes. Are you going to close, or is Mr. O'Donnell?
Mr. Parsons: I will close.
The Court: You will open and close?
Mr. Parsons: We haven't quite decided that.
The Court: It doesn't make any difference, it is just for my own information.
Mr. Abt: There are two matters, your Honor, and one is on the question of these exhibits. It seems to me
1317 that it would be well if we could get together with the Government before tomorrow so that we might check against each other's list as to what exhibits are in and what are out, so there will be no confusion tomorrow as to what goes to the jury and what doesn't.
The Court: I think that is true.
Mr. Abt: Do you have a list, Mr. Parsons?
Mr. Parsons: I think we had better type ours up.
Mr. Abt: We can trade lists and get together on any discrepancies, your Honor.
Mr. Parsons: We can do that after this morning's session.
1318 The Court: I want to send this case to the jury in the morning session.
Mr. Parsons: Then we had better get together at noon.
The Court: Who is going to talk this afternoon?
Mr. Abt: Mr. Crockett.
The Court: For how long?
Mr. Abt: Approximately three-quarters of an hour, your Honor.
Now there is just one other matter, your Honor, on the

length of the arguments. I think perhaps I spoke too quickly the other day. If you will recall, I requested two hours and your Honor suggested an hour and a half. I accepted it without discussion, but I have spoken to Mr. Parsons this morning about it, and we would like your Honor's indulgence for fifteen minutes of elbow room here, which we may or may not use.

The Court: All right, I will give you fifteen minutes in addition, if you need it; if not, it is not a Court order that you use it.

Mr. Parsons: We appreciate that.

Mr. Abt: We understand that.

The Court: I guess we are ready to proceed now.

Mr. Abt: Your Honor, I am very sorry, but I
1319 have a motion to strike a portion of the testimony.

The Court: What is it?

Mr. Abt: At transcript 245 to 250, the witness Meyer testified that during the period of the Communist Political Association, these classical writings of Marx and Lenin and so forth were much less used than they had been in the previous period.

Now, your Honor, I objected to that on the grounds that no connection was shown with the defendant. Your Honor allowed it subject to connection. There never was any connection and the whole matter was never referred to again in the course of the entire case.

We came across that only last night when we were going through the transcript, and on your Honor's own ruling, therefore, it seems it should be stricken at this time.

Mr. O'Donnell: I am not sure I got that straight.

Mr. Abt: It is transcript 245 to 250.

Mr. O'Donnell: Once again, your Honor, one of the elements in this indictment is the nature, aims and objectives of the Communist Party itself. We have had testimony concerning the Communist Political Association. You recall the date July 26, 1945 which is set out in the indictment, and that refers to the date on which the
1320 Communist Party was reconstituted in the United States, that is, the national Party, and we have had testimony to the effect that it was also done here in Illinois.

That testimony concerning the Communist Political Association to which Meyer referred, as I stated before, went to the nature of the Communist Party itself and to

that change which took place in the Communist Party from which this indictment date, the basis on which this indictment date of July 26, 1945 was set.

Mr. Abt: I checked the record on that very carefully last night, your Honor, and the fact of the matter is that the only evidence with reference to this 1945 matter that your Honor allowed to remain in the record was the bare statement of fact that in 1945 there was a convention of the Communist Party which changed its name from the Communist Political Association to the Communist Party.

That is all there is in the whole record, your Honor, with this exception, and in the case of this exception, your Honor specifically stated that you would reserve your ruling subject to connection, and there was no connection—never.

Mr. O'Donnell: I took the position there was such
1321 a connection, your Honor.

The Court: What was the connection?

Mr. O'Donnell: My recollection isn't quite what Mr. Abt's is. I would stand corrected, but if I had an opportunity to check the record again, as I said before, we have had testimony concerning the Communist Political Association and the fact that it existed and Browder was head of the organization.

This testimony of Meyer was background testimony concerning the nature of the Communist Party, the nature of that change-over that took place, and on which is predicated the indictment date of July 26, 1945.

If your Honor please, I would like to reserve this motion to strike. I think it is late, but I would like to check the record again to see just exactly what the record does say in regard to this particular matter.

The Court: I will give you that opportunity and I will rule on your motion now.

Mr. Abt: After the recess, your Honor, I take it?

The Court: Yes.

(Recess taken.)

1322 The Court: You may proceed, Mr. Parsons.

I will pass on that matter later on, probably tomorrow morning.

* * * * *

1415 Before Hon. Philip L. Sullivan, Judge, and a Jury.

Tuesday, January 25, 1955.
10:10 o'clock a. m.

Court met pursuant to adjournment.

Appearances:

Mr. Parsons. Mr. O'Donnell, on behalf of the Government; Mr. Abt, Mr. Crockett, Mr. Clayton, on behalf of the Defendant.

And the Defendant, Claude Mack Lightfoot, was personally present.

1416 (The following proceedings were had in open court, out of the presence and hearing of the jury:)

Mr. Abt: Your Honor, I think we have two preliminary matters. The first is the motion we made yesterday to strike a portion of the witness Meyer's testimony.

Mr. O'Donnell: I think I recall that was the portion regarding the using of the doctrines during the Communist Political Association, is that correct?

Mr. Abt: The use of the so-called "classics," yes, by Marx, Lenin, Stalin, and so forth.

Mr. O'Donnell: Your Honor, we stand on the same position we stated yesterday, and in addition we say that we believe this motion is, if anything, late, and that regardless of the situation, we don't feel that any useful purpose would be served either way at this time.

The Court: Well, to be consistent, I think I will let it in.

Mr. Abt. You admit it, your Honor?

The Court: Yes.

Mr. Abt: The next question, your Honor, relates
1417 to the Exhibits. There are a number of questions with regard to the Exhibits, but I don't want to burden your Honor with them, and I am willing to pass all of them except one.

The Government contends that the entire book, Exhibit 22, "History of the Communist Party of the Soviet Union," and the entire book, "Foundations of Leninism," were admitted in evidence.

Now as we read the record, that is clearly not the case. Certain pages were offered, and your Honor admitted certain pages. As a matter of fact, you took the position,

I believe, from the outset of the trial, that you weren't going to admit the complete book in evidence in any case.

Mr. O'Donnell: With regard to the first, "History of the Communist Party of the Soviet Union," at page 1105 in the transcript, the Government offered an additional copy which was the copy that the witness Brzek had used in connection with his studies at the Party school in 1947 at Lake Ivanhoe. At that time that book was offered and Mr. Abt stipulated that the book was in evidence, and also to the fact that it was the same book.

We contend that book was offered in its entirety; however, we have offered from it several pages. With re-
1418 gard to that book. I see no objection why the jury couldn't see the book in its entirety and have their attention directed towards the specific pages which were both read and identified through the various witnesses.

Mr. Abt: Your Honor, we went over all that at great length on Friday.

The Court: Yes, and I am not going over it again. Just the pages.

Mr. O'Donnell: Just the pages?

The Court: That is right.

Mr. O'Donnell: Then I assume your ruling with regard to the Exhibit, "Foundations of Leninism" would be the same?

The Court: Same ruling.

Mr. Abt: I think that is all, your Honor.

The Court: All right.

Mr. Abt: May I ask your Honor a question?

In computing my time yesterday, we figure we had just an hour left, that is, with that fifteen minutes leeway?

The Court: I didn't figure it that way. I figured you have 45 minutes.

Mr. Abt: I think not, your Honor. Mr. Crockett started at five minutes after two.

1419 The Court: Well, not quite that. You will have 45 minutes.

Mr. Abt: Just 45 minutes?

The Court: That is right. That will be an hour, the way I have kept the record, and it will be an hour and 43 or 45 minutes.

Mr. Abt: All right, sir.

The Court: You may bring in the Jury.

(The following proceedings were had in open court in the presence and hearing of the Jury:)

1492 Instructions

The Court: Ladies and gentlemen of the jury: It is my prerogative to comment on the evidence in the case, but I do not choose to do so because I have confidence in your judgment to return a proper and just verdict. You will now be given the law in this case.

C-2.

"The Grand Jury of this judicial district has returned an indictment against this defendant charging him with an offense against the laws of the United States."

C-3.

"The instructions given to you in this case are the instructions of the Court and the law of the case which must govern you, and you should consider that only as law which has been given you by the Court in the instructions, and it is as much your duty to regard the law as given you in the instructions of the Court and to decide this case in accordance therewith as it is your duty to consider the evidence in the case, and you should be governed as to the law in this case entirely by the instructions of the Court."

1493 D-26.

"Your personal opinion as to the facts not proved by the evidence cannot properly be considered as the basis of your verdict. You can only lawfully act upon the evidence introduced upon this trial, and upon such evidence alone you should form your verdict, unaided and uninfluenced by any opinion not formed or based upon the evidence in this case."

C-4.

"You are permitted to consider only the evidence as presented in open court; you are not to consider sympathy or be influenced by any article which may have appeared in any newspaper or other publication, or on radio or television."

C-5.

"The indictment in this case is not to be considered by you as any evidence or presumption of guilt against the

defendant. It is a mere formal charge necessary to place the defendant upon trial. The defendant under the law is presumed to be innocent of the charge in the indictment, and this presumption remains throughout the trial and during your deliberation and consideration of your verdict with the defendant, until you have been satisfied by the evidence in the case beyond all reasonable doubt of the guilt of the defendant.

"This presumption of innocence is not intended to aid any one who is in fact guilty of crime to escape, but is a humane provision of the law intended, so far as human agencies can, to prevent an innocent person from being convicted."

1494 D-22.

"The fact that the Court has submitted this case to the jury is not to be considered by the jury as any intimation by the Court that the defendant is or is not guilty."

C-6.

"Throughout this case the burden of proving the guilt of the defendant beyond all reasonable doubt is upon the Government, and the law does not require the defendant to prove his innocence."

1495 C-7.

"Reasonable doubt, referred to in these instructions, is such that were the same kind of doubt interposed in the graver transactions of life, it would cause a reasonable and prudent man to hesitate and pause. If, after considering all the evidence, you can say you have an abiding conviction of the truth of the charge, you are convinced beyond a reasonable doubt.

"If, therefore, you are convinced from all the evidence in the case beyond all reasonable doubt of the guilt of the defendant, it is your duty to find the defendant guilty. If you are not so convinced, it is your duty to find the defendant not guilty."

C-8.

"You are the sole judges of the credibility of the witnesses and the facts in this case. Your verdict will not necessarily be determined by the number of witnesses testifying, or exhibits in evidence, for either side; you may

take into consideration the number of witnesses testifying,
or exhibits in evidence, in support of or against
1496 any fact or state of facts; the opportunities of the
several witnesses for knowing the things about which they testify; their conduct and demeanor while testifying; their age, discretion and experience; their bias and lack of bias; their interest, if any, in the result of the trial; the probability or improbability of the truth of their several statements; the relation which they bear to either side, and the extent to which any witness is contradicted or corroborated by any other credible evidence, if at all, and any evidence that tends to shed light upon his credibility.

"Confining your deliberations to facts which are in evidence, you shall not give any piece of evidence greater weight than you would otherwise give it because of its being consistent with any preconceived belief you may have as to the nature of Communism. Nor shall you give any piece of evidence less weight than you would otherwise give it because it may seem inconsistent with some such preconceived belief."

1497 C-9.

"If you believe from the evidence that any witness has wilfully sworn falsely to any material matter in this case, you may disregard the entire testimony of such witness, except insofar as it may be corroborated by other and credible evidence, or by facts and circumstances in evidence."

C-10.

"There are two kinds of evidence, direct and circumstantial evidence. Direct evidence is that sort of evidence by which a fact is proved directly and without inference from other facts, and is usually given by witnesses who saw, heard, or otherwise observed some particular fact or occurrence. Circumstantial evidence is that sort of evidence by which an inference of an unkown fact is drawn from the existence of known facts. Circumstantial evidence in criminal cases is the proof of such facts and circumstances connected with or surrounding the commission of the crime charged as tend to show the guilt or innocence of the party charged. If the facts and the cir-

cumstances shown by the evidence in this case are
1498 sufficient to convince you of the guilt of the defend-
ant beyond a reasonable doubt, then such evidence is sufficient to authorize you to find the defendant guilty. Circumstantial evidence is legal evidence, and is to be considered by you in arriving at your verdict."

C-11.

"You are further instructed that in a criminal case where there are two theories under which the evidence can be reasonably explained, one of guilt and one of innocence, it is your duty to lean to the innocent construction and to find the defendant not guilty, because the rule of law is that the defendant is presumed to be innocent and this presumption, as a matter of law, rests and abides with the defendant throughout his trial and during your deliberations, and therefore if the evidence in this case can as reasonably and consistently be explained upon the hypothesis of innocence as upon the hypothesis of guilt, it is your duty to give the defendant the favor or benefit of the doubt and find him not guilty."

1499 C-12.

"You are instructed that as a matter of law admission of guilt is not implied from silence of the party charged with crime. Failure to deny on the stand accusation when the right of silence exists does not raise any presumption of guilt against the defendant. Failure of the accused to speak does not raise the presumption of guilt against him."

C-13.

"You must not consider any evidence in arriving at a verdict which you have heard, but which the Court has afterwards stricken from the record, nor should you consider any evidence which has been offered and which the Court has refused to receive. You are to disregard all statements of witnesses which the Court ordered stricken out, if any. Such statements are not evidence in the case and must not be considered by you. You should not draw any inference whatever from the fact that attorneys in the case have objected during the progress of the trial to questions asked and answers made by witnesses. It

is the right of the attorneys on either side to object
1500 to the introduction of the testimony. Such objections
raise questions of law to be decided by the Court
only."

D-25.

"It is your duty to consider only that part of the evidence offered which the Court has ruled admissible, or which has been admitted without objection. You must not consider any matter which the Court has ordered stricken. By admitting evidence, the Court has not implied any opinion as to its truth, credibility or weight. When the Court has sustained an objection to a question, you must ignore that question and may not draw inferences from its wording or guess as to what the witness would have said if allowed to answer."

G-A.

"The Congress of the United States provided in Section 2385 of Title 18 of the United States Code as follows:
'Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach,
advocate or encourage the overthrow or destruc-
1501 tion of the Government of the United States by force
or violence, or becomes or is a member of, or affiliates with any such group or assembly of persons, knowing the purpose thereof,' (Shall be punished.)"

G-B.

"This is a one-count indictment. This indictment charges that from on or about July 26, 1945, and continuing thereafter, up to and including the date of the filing of the indictment, the Communist Party of the United States of America has at all times been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit. It also charges that from on or about July 26, 1945, and continuously thereafter, up to and including the date of the filing of the indictment, in the Northern District of Illinois and elsewhere, Claude Mack Lightfoot, the defendant in this case, has been a member of the Communist Party of the United States of

America, and that through that period he knew that
1502 the Communist Party was a society, group and assembly of persons who taught and advocated the overthrow of the Government of the United States by force and violence as speedily as circumstances would permit, and further that he intended to bring about such overthrow and destruction as speedily as circumstances would permit."

D-1.

"The defendant has stated that he was a member of the Communist Party throughout the period charged in the indictment.

"Therefore, there are only two issues on trial before you:

"1. Did the defendant, within the period from May 14, 1951 to May 14, 1954, know the Communist Party of the United States to be a society, group, and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit?

"2. Did the defendant, within the period from May 14, 1951 to May 14, 1954, intend to bring about the
1503 overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit?

"Unless you find to your satisfaction, and beyond a reasonable doubt, that the defendant had both such knowledge and such intent, within the period from May 14, 1951 to May 14, 1954 you may not find the defendant guilty."

1504 G-D.

"Before you find the defendant guilty of the charge in the indictment you must believe from all the evidence, and beyond a reasonable doubt, that the Communist Party of the United States, on or about the time stated, and at the place and in the manner stated in the indictment, was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States of America by force and violence as speedily as circumstances would permit. You must further believe, and beyond a reasonable doubt, that the defendant was a member of the aforesaid Party,

well knowing this fact, and intending to bring about such overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

"You are at liberty to consider in connection with the evidence, membership or the holding of office as evidence of such knowledge, and you are at liberty to find the existence of such knowledge on the basis of all the evidence, but you may not find the existence of such knowledge on the basis of evidence of membership or holding of office alone."

1505

G-C.

"Before you may find the defendant guilty of the charge of the indictment, you must believe from all the evidence and beyond a reasonable doubt that the Communist Party of the United States was an organization which taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, that the defendant was a member of that organization, well knowing that the Communist Party of the United States of America was and is a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and intended to bring about such overthrow as speedily as circumstances would permit."

1506

G-O.

"The teaching and advocacy of the overthrow of the Government of the United States by force and violence as soon as circumstances would permit as stated in the indictment and in the Smith Act refers to the teaching and advocacy, in this case, of the Communist Party of the United States, and not to its members individually. Whether or not all members of the Communist Party teach and advocate this doctrine or objective is immaterial to the issues of this case."

D-2.

"It was not a crime during the period of this indictment to hold membership or office in the Communist Party.

Nor was it a crime by itself to attend or speak at Communist Party meetings, to teach in Communist Party schools, to write for Communist Party publications, or to read or discuss Communist Party books and publications.

"Therefore, you cannot find the defendant guilty because he was a member of and held office in the Communist Party, or because you find from the evidence that he engaged in any of the other activities which I have
1507 just described, unless you find from the evidence to your satisfaction, and beyond a reasonable doubt, that he knew the Communist Party to be a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the United States by force and violence, as speedily as circumstances would permit, and unless you further find from the evidence to your satisfaction, and beyond a reasonable doubt, that he intended to bring about such overthrow by force and violence, as speedily as circumstances would permit."

G-G.

"You are instructed that membership or holding office in the Communist Party does not per se constitute a violation of the law, that is to say, the fact that a person may be a member or officer in such organization does not in or of itself constitute a crime under the indictment. However, if you believe that the Government has established, beyond a reasonable doubt, that the defendant was a member of the Communist Party of the United States, with knowledge that it taught and advocated the
1508 overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, the Government has satisfied its burden in this respect, and to the defendant's knowledge of such teaching an advocacy."

D-3.

"Neither the Communist Party nor Communism is on trial in this case. The principal issue in this case is not whether the Communist Party has advocated the overthrow and destruction of the Government of the United States by force and violence. The principal issue in this case is whether the defendant knew the Communist Party

as a society of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence, as speedily as circumstances would permit, and whether the defendant himself intended to bring about such overthrow by force and violence as speedily as circumstances would permit."

1509 G-J

"If you believe from the evidence beyond a reasonable doubt that the Communist Party teaches and advocates the overthrow and destruction of the Government of the United States by force and violence as soon as circumstances would permit, and if you believe beyond a reasonable doubt that the defendant was a member of said Party, in the Northern District of Illinois during the Statutory Period, with knowledge that it taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and if you find beyond a reasonable doubt that defendant intended to bring about such overthrow as speedily as circumstances would permit, it is not necessary that the Government prove that the defendant, himself, on any specific occasion, taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, within the indictment period."

1510 D-20

"Regardless of what you may find to have been the principles and doctrines which were taught and advocated by the Communist Party, you cannot find the defendant guilty unless you find to your satisfaction, and beyond a reasonable doubt, that the defendant had both the knowledge and the intent charged in the indictment, within the period from May 14, 1951 to May 14, 1954."

1511 D-21

"Defendant, in common with all other persons living under our Constitution, has the right protected by the First Amendment to criticize the Government and its foreign and domestic policies, as well as the right to praise the foreign policy of other governments and the

role being played by those governments in international affairs. Therefore, your verdict in this case must not be influenced or affected by your view as to the truth or falsity, the reasonableness or unreasonableness or the validity or invalidity of opinions on these subjects expressed by the defendant or the Communist Party."

G-L

"With respect to the element of the required specific intent of the defendant you may infer this, if you do so infer, this intent from all of the evidence in the case. More particularly in this connection if you believe that he had knowledge of the aims and objectives of the Communist Party, and was engaged in indoctrinating other persons in the principles of the Party, and those
1512 principles included the purpose of advocating the overthrow of the Government by force and violence, you can infer that he had the specific intent required as an element of the crime. Each of the elments of the crime must be established to your satisfaction beyond a reasonable doubt."

D-5

"Evidence of acts and statements, oral or written, prior to May 14, 1951, which were performed, or spoken or written by the defendant, or authorized or ratified by him, or known to him, are to be considered by you solely in so far as they may aid you in determining whether or not the defendant had the knowledge and the intent charged in the indictment, within the period from May 14, 1951 to May 14, 1954. However, you may not find the defendant guilty unless you are satisfied from the evidence, and beyond a reasonable doubt, that the defendant had both the knowledge and intent charged in the indictment, within the period from May 14, 1951 to May 14, 1954."

1513 G-L

"With respect to the element of the required specific intent of the defendant you may infer this, if you do so infer this intent, from all the evidence in the case. More particularly, in this connection, if you believe that he had knowledge of the aims and objectives of the Communist Party, and was engaged in indoctrinating other persons

in the principles of the Party, and those principles included the purpose of advocating and teaching the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, you can infer that he had the specific intent required as an element of the crime. Each of the elements of the crime must be established to your satisfaction beyond a reasonable doubt."

G-R

"In determining the issue as to the knowledge and intent of the defendant, you may consider any meaning or interpretation given and any use made of any exhibit by him, as shown by the evidence, including of course any
1514 statement or declaration such defendant may have made as to his understanding of the meaning of all or any part of the language of any exhibit."

D-13

"Intent is a state of mind and is purely personal. The intent of the defendant can be established only by his own acts, statements and writings. You cannot find the intent of the defendant from the acts and statements of any other person unless you are satisfied, and beyond a reasonable doubt, that the defendant authorized such acts and statements, knowingly consented to such acts and statements, or ratified such acts and statements after knowledge thereof."

D-14

"In determining whether or not the defendant had the intent charged in the indictment, you cannot consider the testimony with reference to the acts or statements of any person other than the defendant himself, unless you are satisfied from the evidence that such other person was speaking or acting for and on behalf of the defendant
1515 and with the defendant's knowledge and consent."

D-15

"For purposes of this trial, a person can be said to teach or advocate the overthrow and destruction of the Government of the United States by force and violence only when his expressions are designed to induce action,

rather than discussion or belief, and only when they are expressed in language which, under the circumstances in which it is used, is reasonably and ordinarily calculated to incite persons to such action, rather than merely to discussion or belief."

G-R

"In determining the issue as to the knowledge and intent of the defendant, you may consider any meaning or interpretation given and any use made of any exhibit by him, as shown by the evidence, including of course any statement or declaration such defendant may have made as to his understanding of the meaning of all or any part of the language of any exhibit."

1516

D-29

"If you come to consider as bearing upon the knowledge or intent of the defendant a purported oral and unrecorded statement which such defendant is reported to have made, and such report comes from only one witness, you should bear in mind that, even if you decide to believe that particular testimony, it is still very probable that the witness did not testify as to the exact words used by the defendant and that it is very easy for the report of a listener; however honest, to distort the intent of the speaker. Since the defendant's knowledge and intent must be proved beyond a reasonable doubt, you should weigh these possibilities with care before concluding that such knowledge or intent has been shown by unrecorded words which have been filtered through the understanding and memory of another."

G-E

"The words 'overthrow the Government by force and violence' are not words of art which must have been stated either by the Communist Party or by any
1517 of its members, or by the defendant, in order that the aims and objectives of the Communist Party include the overthrow and destruction of the Government by force and violence. If from all the evidence you believe, beyond a reasonable doubt, that one of the aims and objectives of the Communist Party of the United States was in fact the overthrow of the Government of the United States by force and violence, you may so con-

sider, irrespective of the use of these specific words by the Communist Party or by any of its members or by the defendant."

D-16

"The words 'revolution,' 'destruction' and 'overthrow' in themselves do not imply the use of force or violence for the accomplishment of the objective which is sought. 'Revolution', 'destruction' or 'overthrow' may be accomplished by peaceable and non-violent means."

1518

D-18

"If you find that the defendant's understanding of the teaching and advocacy of the Communist Party was that it desired to achieve its objectives by peaceful means and justified the use of force and violence only as a method of last resort to enforce the majority will if at some future time constitutional or peaceful channels for change were no longer open, then you must find the defendant not guilty."

D-17

"There is no presumption that a person will continue to engage in an activity previously lawful after the enactment of a statute making such activity unlawful. On the contrary, the general presumption is that the law will be obeyed.

"Hence, if you find from the evidence that the defendant, prior to June 28, 1940, the date of enactment of the Smith Act, was a member of the Communist Party and had the knowledge and intent charged in the indictment, you cannot infer that such knowledge, or such intent, con-
1519 tinued after June 28, 1940, unless there is evidence before you affirmatively showing that it did continue."

D-24

"In weighing the testimony of witnesses who entered the Communist Party at the request of the F. B. I., or other Government agency, you may consider whether, in the light of all the circumstances, they may have entered the Party in such a state of mind as would incline them to note and remember speeches and incidents, or aspects of speeches and incidents, which might be helpful to the

Government, while overlooking or forgetting other speeches and incidents, or other aspects of the same speech or incident, which might be helpful to the defense.

"You may give such effect to this consideration as you may think it deserves."

1520 D.28.

"Neither by these instructions nor by any words uttered or remarks made by the Court during this trial, does or did the Court intimate and mean to give, or wish to be understood as giving, an opinion as to what the proof is or what it is not or what the facts are in this case or what are not the facts therein. It is solely and exclusively for you to find and determine the facts."

D-7.

"The doctrine of personal guilt, as distinct from guilt by association with others, is one of the fundamental principles of our law.

"Therefore, you cannot impute to the defendant or charge him with knowledge of the contents of any book or writing circulated by the Communist Party, unless you are satisfied by the evidence and beyond a reasonable doubt that the defendant himself read such book or writing or that its contents were otherwise brought to his personal knowledge. Similarly, you cannot impute to the defendant or charge him with knowledge of any speech or con-
1521 versation unless you are satisfied by the evidence, and beyond a reasonable doubt, that it took place in his presence or was otherwise brought to his personal knowledge."

D-8.

"You may not use testimony as to statements made by other persons as evidence against the defendant merely because such other persons were members of the Communist Party. The law does not make a member of the Communist Party responsible for the acts or statements of any other member merely because of their common membership in that organization."

D-9.

"The fact that the defendant used any book or writing in any school or class, or discussed such book or writing

with some other person, or has read such book or writing cannot, standing by itself, be taken as proof that the defendant agreed with or approved any particular statement contained in such book or writing, or had knowledge of the teaching and advocacy of any other person with reference to such book or writing."

1522 D-10.

"The opinion alone of any witness concerning the meaning of Marxism-Leninism and the aims and objectives of the Communist Party cannot be imputed or charged to the defendant, and cannot be taken by you as evidence of the opinion of the defendant, or as evidence that the defendant's knowledge concerning the meaning of Marxism-Leninism, or the aims and objectives of the Communist Party, is in accord with such opinion testimony."

D-11.

"It is for you to determine whether or not any witness who testified in the capacity of an expert has the qualifications of an expert on the matters concerning which he testified. Moreover, the opinions expressed by any such witness are not binding upon you and you may reject or accept any such opinions which you find are not well founded in fact. In any event such opinions are to be treated no differently from any other testimony and should receive such weight and credit by you as you may determine."

1523 D-12.

"A question of interpretation can be resolved against the defendant only by evidence of acts or statements of Marxism-Leninism by the defendant himself, which are consistent with one interpretation and inconsistent with another. In the absence of proof of such acts or statements on the part of the defendant, all differences of interpretation of Marxism-Leninism or of the aims and objectives of the Communist Party must be resolved in his favor."

1524 Your first duty, ladies and gentlemen, in going into the jury room, will be to elect a foreman, and whichever verdict you sign, have the foreman sign at the top and the rest of you underneath.

If you find the Defendant, Claude Lightfoot, guilty as charged in the indictment, you will all sign this form:

"We, the jury, find the Defendant, Claude Lightfoot, guilty as charged in the indictment."

If you find the Defendant, Claude Lightfoot, not guilty, you will all sign this form:

"We, the jury, find the Defendant not guilty."

The twelve jurors may retire to the jury room.

Pardon me just one minute. Swear in the marshals.

The Clerk: You and each of you do solemnly swear as Bailiffs in charge of this jury that you will provide for them a suitable and convenient place for their deliberations, that you will allow no one to speak to them or tamper with them, nor will you speak to them yourselves, 1525 except to ascertain whether they have agreed upon a verdict. So help you God.

The Court: You may retire.

(Whereupon the jury retired from the court room to consider on their verdict.)

The Court: Now as to the two alternates, I want to thank you for your services. You are no longer required. You may be excused from further duty.

(Addressing Counsel:)

I take it there were no other exceptions except those expressed before, out of the presence of the jury, with reference to the instructions.

Mr. Abt: That is correct, your Honor, simply the objections made during the course of the argument of the instructions.

The Court: That is correct, is it, Mr. Parsons?

Mr. Parsons: I understand so, your Honor, yes.

The Court: Now, in the event the jury do not come in during court hours, do you want to agree on waiving the polling, sign a sealed verdict, to be opened tomorrow morning?

Mr. Parsons: It is agreeable to the Government, 1526 your Honor.

Mr. Abt: May I have a moment, please, your Honor? If your Honor please, it is my feeling and the feeling of both my associates, Mr. Crockett, and my client, that we would like to have the jury polled.

The Court: You would like to have the jury polled?

Mr. Abt: Yes, sir.

The Court: Well, you will have to stay here.

Mr. Abt: Pardon me?

The Court: You will have to be present all night.

Mr. Abt: We understand that, your Honor. We hesitate to inconvenience you on it, but we think it may have some importance, and we would like to be present when the jury returns its verdict.

The Court: All right. That means, of course, that you will have to stay here.

Mr. Abt: We fully understand that, your Honor.

1527 What is the practice, your Honor, how long do you keep the jury before you lock them up?

The Court: I have no set practice.

Mr. Abt: All right, your Honor.

The Court: Oh, yes, how about the Exhibits?

Mr. O'Donnell: We have the Government's Exhibits here, your Honor.

The Court: I wonder if this could be avoided, in the event they don't come in, to have a sealed verdict and to have the jurors return?

Mr. Abt: How late would you keep them, how late would you be here tonight, your Honor?

The Court: I don't know at this moment.

Mr. Abt: May we consider that? I assume the jury is going out to lunch.

The Court: No, lunch is being brought in. The jury are now under lock and key and will be until they return.

Mr. Abt: May we consider it for a few moments, your Honor, and let you know?

The Court: All right.

How about the Exhibits, let's get those in.

Mr. Abt: I have the Defendant's Exhibits here, your Honor. Perhaps we should trade Exhibits, your Honor, for a moment, and check them.

1528 The Court: Suppose you do that.

I will send the indictment into the jury room, there is only one count, and I will send it in.

Mr. Abt: Your Honor, we fully appreciate the problem you have raised, and after further discussion we have agreed that the jury may bring in a sealed verdict, provided they return tomorrow so they may be polled, if that is satisfactory.

The Court: Is that agreeable to the Government?

Mr. Parsons: The Government is agreeable to the sealed verdict, your Honor.

The Court: Yes, and I want the Defendant himself to agree to that.

Mr. Abt: The Judge wants to know whether that is satisfactory, Mr. Lightfoot.

Mr. Lightfoot: Yes, sir.

The Court: You have heard your Counsel make the statement that is satisfactory to you, the Defendant?

Mr. Lightfoot: Yes, sir.

The Court: The jury may return a sealed verdict, and they will return in the morning when the verdict is opened and you may poll them.

1529 Mr. Abt: Yes, sir.

Mr. Lightfoot: Your Honor, that sealed verdict will be returned to you, of course?

The Court: Oh, yes, it will be sealed and returned to me, and be in my custody.

However, if they come in before, we will say, seven o'clock—

Mr. Abt: Yes, surely, it is up to you, your Honor: as far as we are concerned, we will be here as long as you want us to be.

The Court: So you have the Defendant and one Counsel present in the event the jury does come in by that time.

Mr. Abt: Of course, your Honor.

The Court: All right.

Mr. Abt: The only problem, your Honor, is that the Defendant may want to go out and get a bite to eat.

The Court: That is all right. You may go out. You may go now until one-thirty.

Mr. Abt: One-thirty?

The Court: Yes.

Everyone may go now until one-thirty.

(Whereupon a recess was taken until one-thirty o'clock P. M. of the same day.)

1530 Before Hon. Philip L. Sullivan, Judge, and a jury.

Tuesday, January 25, 1955,
7:08 o'clock P. M.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government.

Mr. Abt, Mr. Crockett, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

And thereupon the following further proceeding were had in said cause:

1531 (The following proceedings were had in open court in the presence and hearing of the jury:)

The Court: I understand from the Marshal that someone inquired as to whether or not you could bring in a verdict with less than twelve on the verdict. I told you when you went out, if you will recall, when I gave you two verdicts, if you found the defendant guilty, have the foreman sign at the top and all the rest of you underneath; that if you found the defendant not guilty, to have the foreman sign at the top and all the rest of you underneath. So that means there must be twelve signatures. You must agree on a verdict. You may go back and deliberate if you have not reached a verdict. Just a minute. Are there any questions? Who is the foreman?

Foreman Walter J. Stadtler: I am, Judge. Well, there has been a little discussion on one point maybe. Is there anything outside of a not guilty or guilty? Would we have any part in the sentence?

The Court: Not a thing. You have two verdicts. It is either guilty or not guilty, no intermediate of any type. You may retire.

(Thereupon the jurors retired from the and the
1532 following proceedings were then had in open court out of the presence and hearing of the jury:)

The Court: Well, I guess that is that, gentlemen. Now, I am inclined to think that I will order now a sealed verdict. I don't think it is incumbent upon me to stay here all night waiting for this verdict, apparently, from the juror's interrogation, they are not in agreement yet any-

way. So I think that I will instruct the Marshal if the verdict comes in before they are sent to bed, or thereafter in the event after they go to their room they reach a verdict (I don't think that is hardly probable, but it may be possible) that the verdict will be brought into my chambers, duly sealed and unopened for my inspection of the verdict, and it will be opened, if there is a verdict, by the Clerk at ten o'clock, or soon thereafter, tomorrow morning.

Mr. Abt: May we have just a minute? Does the jury retire at ten o'clock, your Honor?

The Court: I have not decided definitely, but that is my best judgment at this moment, and within the next few minutes I will decide. It may be 9:30; it may be 10.

Is there anything else that you want to inquire about
1533 now?

Mr. Abt: Nothing further from us, your Honor.

The Court: The jury has been instructed to return here tomorrow morning anyway—I mean whether they reach a verdict or not—for the purpose of polling, if you so desire. Anything?

Mr. O'Donnell: I was just going to inquire, your Honor: Do we understand anytime after the present moment, at least after the time your Honor leaves the building, it will be a sealed verdict?

The Court: That is right. I think I will make that announcement right now, so that you gentlemen won't have to wait here, including the defendant. Be here tomorrow morning at ten o'clock. It will be tomorrow morning at ten o'clock.

Mr. Parsons and Mr. Abt, I forgot to tell the jurors that they may give their telephone numbers to the marshal, so that he may call their homes, if they don't reach a verdict before they retire. If you desire, rather than call them back, I will step right into the jury room. Mr. Abt and Mr. Parsons, do you wish to step into the jury room with me?

Mr. Abt: No, it will be all right for your honor to go in alone.

1534 Mr. Parsons: That is agreeable.

(The following proceedings were had in the jury room in the presence and hearing of the jurors:)

The Court: I forgot to tell you that in the event you are taken to a hotel over night you may give your telephone numbers to the Marshal, as soon as that is found

out, and he will call your homes for you. Is that satisfactory?

Jurors: Yes, your Honor.

Foreman Stadtler: Anything your Honor orders will be satisfactory.

The Court: I know it would not be satisfactory if you had to stay here over night, so instead of having you stay in this room, you will have a fairly comfortable place.

Foreman Stadtler: Thank you, Judge.

Whereupon an adjournment was taken to 10:00 o'clock A. M. of the following day, Wednesday, January 26, 1955.

1535 Before Hon. Philip L. Sullivan, Judge, and a jury.

Wednesday, January 26, 1955,
10:00 o'clock A. M.

Court met pursuant to adjournment.

Appearances:

Mr. Parsons, Mr. O'Donnell, on behalf of the Government;

Mr. Abt, Mr. Crockett, on behalf of the Defendant.

And the defendant, Claude Mack Lightfoot, was personally present.

And thereupon the following further proceedings were had in said cause:

1536 The Clerk: 54 Cr 262. United States of America *vs.* Claude Mack Lightfoot. There is a sealed verdict.

The Court: When this verdict is read, I don't want any demonstration. If there is any, the violators will be punished.

Mr. Clerk, read the verdict.

The Clerk: (Reading.)

"United States of America *vs.* Claude Mack Lightfoot. Verdict. We, the jury, find the defendant Claude Mack Lightfoot guilty as charged in the indictment." Signed by the foreman and the other jurors.

The Court: Do you want the jury polled?

Mr. Abt: Yes, your Honor.

The Court: Poll the jury, Mr. Clerk.

The Clerk: Walter J. Stadtler, was this and is this now your verdict?

Juror Stadtler: Yes, sir.

The Clerk: Benjamin Williams, Jr., was this and is this now your verdict?

Juror Williams: Yes, sir.

The Clerk: Octavia Randolph, was this and is this now your verdict?

Juror Randolph: Yes.

The Clerk: Sylvia J. Smith, was this and is this
1537 now your verdict?

Juror Smith: It is.

The Clerk: Gertrude Crawford, was this and is this now your verdict?

Juror Crawford: It is.

The Clerk: Gunhill Chapman, was this and is this now your verdict?

Juror Chapman: Yes.

The Clerk: Seretta Isador, was this and is this now your verdict?

Juror Isador: Yes, sir.

The Clerk: Catherine Lee, was this and is this now your verdict?

Juror Lee: Yes, sir.

The Clerk: Rose Vacha, was this and is this now your verdict?

Juror Vacha: It is.

The Clerk: George W. Jank, was this and is this now your verdict?

Juror Jank: Yes.

The Clerk: Laurence I. Parmenter, was this and is this now your verdict?

Juror Parmenter: It is.

The Clerk: I can't read the name of the last juror.

1538 Juror John G. McGuire: John McGuire.

The Clerk: John McGuire, was this and is this now your verdict?

Juror McGuire: It is, Mr. Clerk.

The Clerk: And so say you all, this is your verdict?

The Jurors: We do.

The Court: Anything further before the Jury, Mr. Abt?

Mr. Abt: No, sir.

The Court: Thank you for your services. You may be discharged from further attendance. You may step out.

(Whereupon the following proceedings were had in open court out of the presence and hearing of the jury:)

Mr. Abt: Your Honor has reserved judgment on a motion. I don't care to argue it further, your Honor. We have argued it fully and at length. I am sure you are familiar with our position.

The Court: And I presume you are going to make a motion for a new trial?

Mr. Abt: Yes, sir.

The Court: February 15th, for all motions.

1539 Mr. Abt: February 15th for all motions, your Honor?

The Court: Is that agreeable?

Mr. Abt: That is quite agreeable. May the defendant be continued on his present bond, your Honor?

Mr. Parsons: No objection.

The Court: The defendant may go on the bond that is given now in the sum of $30,000.00.

Mr. Abt: February 15th, then, your Honor?

The Court: February 15th.

Mr. Abt: Thank you.

Whereupon further proceedings in this cause were continued to 10:00 o'clock A. M., February 15, 1955.

1540 IN THE UNITED STATES DISTRICT COURT.
(Caption—54-Cr-262)

TRANSCRIPT OF PROCEEDINGS.

had in the above-entitled cause before the Honorable Philip L. Sullivan, one of the judges of said court, in his courtroom in the United States Court House, at Chicago, Illinois, on February 15, 1955.

Hon. Herbert Brownell, Jr.,
United States Attorney General,
Hon. Robert Tieken,
United States Attorney,
By:
James B. Parsons, Esq.,
Assistant United States Attorney, appeared on behalf of the Government;
John J. Abt, Esq. and
George W. Crockett, Esq.,
appeared on behalf of the Defendant.

And the Defendant, Claude Mack Lightfoot, was personally present.

1541 The Court:

I have been keenly aware that this is not an ordinary criminal case; throughout the trial, I have been sensitive to the justice of Defendant's contention that it would be difficult to secure a fair verdict on this issue; and I have been aware that many of us tend to discard our normal thinking and reactions when we hear the word "Communism". For these reasons, I wished to make an exhaustive study of the evidence submitted, with a view to using my power under Rule 29 of the Federal Rules of Criminal Procedure to direct a judgment of acquittal if it should appear that the verdict of the jury was not supported by evidence from which a reasonable mind could conclude guilt beyond a reasonable doubt.

This study has convinced me that the verdict of the jury was supported by the required evidence.

The defendant was indicted under Section 2 of the Smith Act (Title 18 U. S. C. A. sec. 2385) which provides:

"Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group or assembly of persons knowing the purposes thereof

• • •"

1542 The indictment charges that from on or about July 25, 1945, and continuously thereafter, up to and including the date of the indictment (May 14, 1954), the Communist Party was a society of persons advocating the overthrow of the Government of the United States by force and violence as speedily as circumstances would permit; and that the defendant was a member of that organziation during the same period, knowing these purposes, and intending to bring about such overthrow by force and violence as speedily as circumstances would permit.

That defendant was a member of the Communist Party was admitted by himself as well as by his counsel, and established by formal proof.

The evidence of the Government tending to prove the "advocacy" of the Party falls into several categories. First: There was evidence tending to show that: The Party has "secret" members; in schools conducted by it, training was uniform and according to an established pattern; it is a highly organized group, built on well-defined administrative levels and maintaining discipline within its ranks. This evidence was of course sghificant as showing the deviation of the Communist Party from normal political parties, and an inference may fairly be drawn from it that significant reasons for the deviation exist.

1543 Second: There was evidence to show its teachings and beliefs. This evidence established that the Communist Party is a political party "basing itself on the principles of scientific socialism, Marxism-Leninism." To prove the meaning of this term, there have been introduced a number of extracts from the books which have been described as the "classics" of Marxism-Leninism. A few of these works, on which it was testified the Communist Party relies, are: Communist Menifesto, Stalin, "Foun-

dations of Leninism"; Lenin, "Left Wing Communism, An Infantile Disorder"; Stalin, "Problems of Leninism."

The extracts show that from a stated belief in the principles of "Marxism-Leninism", a reasonable mind could conclude beyond a reasonable doubt a corresponding belief in the use of force and violence for the overthrow of the Government of the United States. In fact, many courts have apparently so construed them.

I find that, considering the documentary evidence, plus the testimony of the witnesses, there was evidence from which a reasonable mind could conclude beyond a reasonable doubt that the Communist Party was, during the indictment period, one which advocated the overthrow of the Government by force and violence as speedily as cir-
1544 stances would permit.

Having found upon ample evidence that the advocacy of the Party was of the use of force and violence for the purposes described, the jury could hardly have found that the defendant did not have knowledge of this advocacy. Considering his writings in evidence, which call for a dedication to "Marxism-Leninism", and all the testimony of all the witnesses, I find that there was evidence from which a reasonable mind could conclude beyond a reasonable doubt that the defendant knew that the Communist Party advocated the overthrow of the Government of the United States by force and violence, and that he intended to bring about such overthrow by force and violence.

1545 The motion for a Judgment of Acquittal at the end of the Government's case will be denied.

The motion for a Judgment of Acquittal at the end of all the evidence will be denied.

The motion for a new trial will be denied.

The motion in arrest of judgment will be denied.

Do you desire to make any comment before I pronounce sentence?

Mr. Abt: You are calling on the Defendant now?

The Court: Or you, representing him.

Mr. Abt: I have no comment, but Mr. Lightfoot, I think, would like to say something.

The Court: All right.

Defendant Lightfoot: Your Honor, gentlemen for the prosecution.

The Court: I don't care to have you try the case over again, but you may make whatever comments you desire.

Defendant Lightfoot: I rise only for the purpose to reaffirm my innocence, my belief in my innocence. I do not wish to try the case all over again, but in stating
1546 my innocence, I think it is necessary for me to state just what I feel the Government failed to prove in this case.

Now, it seems to me four basic propositions were advanced: First, that the CPUSA constitutes a society which advocates the overthrow of the Government by force and violence; secondly, that I knew that this was the purpose of the organization when I joined it; thirdly, that I intended to bring about the overthrow of our Government.

I contend, your Honor—and my conscience is clear—that the Government succeeded in proving only one thing, and that is that I was a member of the CP. Insofar as knowledge and intent is concerned, let me, your Honor, direct your attention to the fact that even were it not necessary for the prosecution to prove that I have performed any overt act, that I have ever uttered or written a single statement to the effect that our Government should be overthrown by force and violence, and that the books of Marxism Leninism in itself is sufficient, I would like to call your attention, your Honor, to the fact that the only reference to those books in relation to me was made in the testimony of the witness Meyer; and in that testimony it was not
1547 even discussed what the nature of the discussion was I had with him about those books. There was no other witness who ever identified those books with me. Moreover, your Honor, those books were associated with me in a period when the Supreme Court had ruled that the Communist Party of the United States sought to achieve its objectives by peaceful means so long as the democratic channels remained open.

So, your Honor, I repeat, my conscience is clear. I have nothing to injure by fellowman. I have worked as a Communist for twenty-four years, and during that period it was always my intent to do what I considered in the best interests of all the American people, including my own people, the oppressed Negro people.

Your Honor, the immortal Shakespeare once said:

"To thine own self be true;
Then thou canst not be false to any man."

I await your verdict, your Honor, with a clear conscience that I have remained true to the truth as I have seen it.

The Court: Anything further before I pronounce sentence?

Mr. Abt: Nothing further, your Honor.

1548 The Court: Mr. Clerk, five years in the custody of the Attorney General; $5,000 fine.

Mr. Abt: May the Defendant be continued on bail? As you are well aware, we are going to appeal this case, and I am sure your Honor will agree that there are very substantial questions involved here.

Th Court: No doubt about it.

Mr. Parsons: We understand the desire of the Defendant to remain on bail during the time of the appeal. We suggest, whatever the bail be, that the Defendant be required to remain within the jurisdiction during that time, and during the time of the appeal, and that he not engage during that time in any activities which are covered by the conduct which has resulted in the conviction in this case.

The Court: Well, I don't know. You are asking me to go pretty far on that, Mr. Parsons, to try to control his conduct. I have controlled it all during the trial up to this point; but I don't think that I have the right to say he cannot belong to the Communist Party, and he cannot take part in its proceedings.

Mr. Parsons: That is true.

The Court: I will permit the Defendant to remain 1549 on the bail that he has already given; and should the Defendant wish to leave the jurisdiction of the Court for any length of time—I don't mean overnight or a day or two—but for any period of a week or over, he should come in and get permission.

Mr. Abt: May we have a distinct understanding on that, your Honor, because Mr. Lightfoot will want to leave the jurisdiction, it will be necessary for him to do it from time to time in order to help raise funds to prosecute his appeal? If we can have an understanding that he will not leave the jurisdiction for longer than one week at a time without applying to you and getting your permission—

The Court: Is one week sufficient?

Mr. Abt: That will be satisfactory, your Honor.

Mr. Parsons: That will, your Honor, satisfy the apprehension of the Government in this matter.

The Court: All right. If you expect to leave the jurisdiction, expect to be gone over a week, you will apply, with notice to the District Attorney, to the Court with

whatever application you desire to make, and the Court will rule on it.

Defendant Lightfoot: That is right.

Mr. Parsons: It is our understanding that the con-
1550 dition of the bail that exists at this time, that the Defendant report on each Saturday morning to the United States Marshal, continues?

The Court: I don't know. He has been here now since bail was given. I don't know that I am going to exact that part of the bail, unless some good reason is shown. What do you say about that, Mr. Abt?

Mr. Abt: Your Honor, I think, while it is not oppressive on Mr. Lightfoot to do that, I think that is quite unnecessary. He has been doing it he has faithfully and punctiliously complied with every condition the Court has made.

The Court: I will make it, instead of every week the first Monday in each month. Is that agreeable?

Mr. Abt: That is agreeable, your Honor.

The Court: My Clerk calls my attention to the fact that it is a different bond. There is an appeal bond.

Mr. Parsons: That is true, your Honor, there is an appeal bond, and usually in twice the amount in issue; and often the District Court refuses to set the appeal bond, and the Defendant obtains that bond by application to the Court of Appeals.

The Court: In twice the amount, did you say?

1551 Mr. Parsons: Yes.

The Court: Well, you are talking about money judgments, aren't you?

Mr. Parsons: We have a bond in the amount of $30,000.

The Court: That bond, the Court will hold, is sufficient. If you feel it is not, you can make your application?

Mr. Parsons: This will be a different bond altogether, requiring the Defendant to sign a new bond in the same amount?

The Court: That is right.

Mr. Abt: Have him sign a new bond?

The Court: Yes, that is right.

Mr. Abt: I am not familiar with the practice.

The Clerk: He files an appeal bond.

The Court: $30,000, appeal bond.

Mr. Parsons: In other words, he is not continued on the same bond, but on a new bond?

The Court: That is right, $30,000.

Mr. Abt: The Defendant and his sureties, I take it, will go up to the Clerk's office and sign a new bond?

The Court: Yes.

Mr. Abt: I think one of the sureties is out of
1552 town today. May we have a couple of days to perfect the new bond?

The Court: Five days.

Mr. Abt: Mr. Lightfoot has already served approximately three months while awaiting trial before he got out on bond. May that be credited to the sentence that your Honor has imposed?

The Court: I can't do that. I mean, I would have to change the sentence and make it four years and nine months. I will say this to you, I read all those cases, and I wanted to have, as nearly as possible, this conform with the leading cases that have been tried on the question of Communism.

Mr. Abt: I would like to call attention, on the question of sentence, if that was the basis—

The Court: That was one of the reasons.

Mr. Abt: That in the New York case before Judge Dimmock, which was a case involving so-called second string Communists, the level immediately below those involved in the Dennis case, the judgments imposed by Judge Dimmock ranged from a year's sentence in the case of one of the defendants to a maximum of three years in the case of two of the defendants, both of whom were full members of the National Committee.

1553 The Court: And five years on other defendants?

Mr. Abt: There was no five-year sentence. In the Flynn case the maximum was three years, imposed on Mr. Perry and Miss Flynn. I am only calling it to your attention.

The Court: I understand, but I have given it considerable thought, on that question as well as on other questions, of course. In this case, in my opinion, my personal opinion on the question of the admissibility of that evidence and as to the weight of the evidence, if I am right about this—otherwise I would not sentence him, unless I thought I was without a reasonable doubt—five years is not too much—five years is not too much for anyone who has for his purpose and object the overthrow of the Government of the United States; and the reason I did not make

it more than five years, was guided—I meant to say, I was guided a good deal by the maximum in those other cases.

Mr. Parsons: I may remark, your Honor, presently there is before the Congress a bill recommended by the Attorney General, which we have every reason to believe will be enacted, to increase the penalties in this case to 20 years and $20,000.

The Court: Off the record.

1554 (Short discussion off the record, not recorded.)

Mr. Abt: I take it your Honor—I know your Honor has given very serious thought to the matter, and I take it that your Honor has been just as serious toward the question of the sentence. I would only like to point this out to you, however, that in the conspiracy cases, and those have been all the cases that there have been, there was a showing as there had to be in those cases, of an overt act, an agreement to advocate the violent overthrow of the Government. In this case, your Honor, and I think your Honor will agree, from the evidence, although the evidence your Honor has held is sufficient to satisfy the membership provision of the Act, there certainly was no evidence here of any act or advocacy on the part of the Defendant of the violent overthrow of the Government.

The Court: I took all that into consideration. I took that into consideration. I don't say that there isn't anything to your point, but I took it into consideration in deciding this. All right, gentlemen.

Mr. Parsons: I should not want myself to go on and re-argue the case itself again, either.

1555 The Court: Oh, no. I have heard it completely, and I have had it under advisement.

Mr. Abt: May I say you have given the Defendant every opportunity to make a full presentation and a full argument in this case.

The Court: Thank you. It has been very enjoyable to have had all of you people in here trying this case. I don't know when I have tried a case that was conducted any better than by both sides in this case.

Mr. Abt: Thank you, sir.

The Court: All right.

37 **And afterwards on, to wit, the 20th day of January, 1955, came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain and Respective Motions, viz: Motion For Judgment Of Acquittal At The Close Of The Plaintiff's Case; Motion For A Directed Verdict At The Close Of The Government's Case; Motion For Judgment Of Acquittal At The Close Of All The Evidence; and Motion For A Directed Verdict At The Close Of All The Evidence in words and figures following, to wit:**

38 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr.-262). * *

MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF THE PLAINTIFF'S CASE.

The United States of America, having closed the evidence offered by it, the defendant, Claude Mack Lightfoot, moves, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, for a judgment of acquittal on the following grounds:

1. The evidence at the close of the government's case fails to establish a prima facie case, and is insufficient to sustain a conviction.

2. The government has failed to prove all of the elements of the crime as charged in that the government has failed to offer any substantial evidence that, within the three years next preceding May 14, 1954, the date of the return of the indictment herein:

a. That the Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit;

b. That the defendant knew that said Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit; or

c. That the defendant intended to bring about the over-

throw of the government of the United States by force and violence as speedily as circumstances would permit.

39 3. The evidence adduced herein is as consistent with innocence as with guilt.

4. The evidence is of such a character that, as a matter of law, it fails beyond a reasonable doubt to exclude any other hypothesis except guilt.

5. There is no substantial evidence which excludes every other hypothesis but that of guilt.

6. There is no evidence from which a reasonable mind might conclude that the defendant is guilty beyond a reasonable doubt.

7. The statute and the indictment involved in this case, as applied to the evidence herein, contravene the First and Fifth Amendments to the Constitution of the United States.

8. The indictment involved in this case, as applied to the evidence herein, is barred by Section 4(f) of the Internal Security Act of 1950.

9. There is no evidence from which the court can find that the charges contained in the indictment, if established beyond a reasonable doubt, constitute a clear and present danger of the overthrow and destruction of the government of the United States by force and violence.

Dated this 20th day of Janury, 1955.

Joseph E. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

40 IN THE UNITED STATES DISTRICT COURT.

• • (Caption—54-Cr-262) • •

MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF THE GOVT. CASE.

The United States of America, having closed the evidence offered by it, the defendant, Claude Mack Lightfoot, moves the Court to instruct the jury to return a verdict of "Not Guilty."

Dated this 20th day of January, 1955, Chicago, Illinois.

Joseph E. C. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

41 IN THE UNITED STATES DISTRICT COURT.
(Caption—54-Cr-262)

MOTION FOR JUDGMENT OF ACQUITTAL AT THE CLOSE OF ALL THE EVIDENCE.

At the close of all the evidence, the defendant, Claude Mack Lightfoot, moves, pursuant to Rule 29 of the Federal Rules of Criminal Procedure, for a judgment of acquittal on the following grounds:

1. The evidence is insufficient to sustain a conviction.
2. The Government has failed to prove all of the elements of the crime as charged in that there is no substantial evidence that, within the three years next preceding May 14, 1954, the date of the return of the indictment herein:

a. That the Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit;

b. That the defendant knew that said Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit; or

c. That the defendant intended to bring about the overthrow of the government of the United States by force and violence as speedily as circumstances would permit.

42 3. The evidence adduced herein is as consistent with innocence as with guilt.

4. The evidence is of such a character that, as a matter of law, it fails beyond a reasonable doubt to exclude any other hypothesis except guilt.

5. There is no substantial evidence which excludes every other hypothesis but that of guilt.

6. There is no evidence from which a reasonable mind might conclude that the defendant is guilty beyond a reasonable doubt.

7. The statute and the indictment involved in this case, as applied to the evidence herein, contravene the First and

Fifth Amendments to the Constitution of the United States.

8. The indictment involved in this case, as applied to the evidence herein, is barred by Section 4(f) of the Internal Security Act of 1950.

9. There is no evidence from which the court can find that the charges contained in the indictment, if established beyond a reasonable doubt, constitute a clear and present danger of the overthrow and destruction of the government of the United States by force and violence.

Dated this 20th day of January, 1955, Chicago, Illinois.

Joseph E. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

43 IN THE UNITED STATES DISTRICT COURT.

(Caption—54-Cr-262)

MOTION FOR A DIRECTED VERDICT AT THE CLOSE OF ALL THE EVIDENCE.

At the close of all the evidence, the defendant, Claude Mack Lightfoot, moves the Court to instruct the jury to return a verdict of "Not Guilty."

Dated this 20th day of January, 1955, Chicago, Illinois.

Joseph E. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

44 And on the same day, to wit, on the 20th day of January, 1955, being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, befoer the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

45 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr-262) * *

This being the day to which this cause was continued for further trial again comes the United States by the United States Attorney comes also the defendant Claude Mack Lightfoot in his own proper person and by his counsel and enters his motions at the close of the Government's case for judgment of acquittal and to instruct the Jury to find the defendant not guilty and the Court having heard the arguments and the statement of the Government in opposition it is

Ordered that ruling on said motions be held in reserve until further order of Court and come now the Jury and Alternate Jurors heretofore elected, empaneled and sworn herein for the trial of this cause the trial proceeds and at the close of all the evidence it is

Further Ordered that the Jury and Alternate Jurors separate and they are instructed to return on January 24, 1955 at 10 o'clock A. M. and the Court having heard the arguments of counsel on the motions of the defendant for judgment of acquittal and to instruct the Jury to find the defendant not guilty at the close of all the evidence it is

Further Ordered that ruling on said motions be held in reserve until further order of Court and that counsel for both sides be and they are hereby directed to return at 10:30 o'clock A. M. on January 21, 1955 for the preparation of instruction to the Jury

* * * * *

48 And afterwards on, to wit, the 26th day of January, 1955 came the Defendant by his attorneys and filed in the Clerk's Office of said Court his certain Motion For New Trial and Motion In Arrest of Judgment in words and figures following, to wit:

49 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr-262) * *

MOTION FOR NEW TRIAL.

Pursuant to Rule 33 of the Federal Rules of Criminal Procedure, the defendant moves the Court to grant him a new trial for the following reasons:

1. There was no evidence of any violation of the statute under which the defendant was indicted as the same was construed by the Court in its charge to the jury.
2. The verdict is contrary to the weight of the evidence.
3. The verdict is not supported by substantial evidence.
4. The verdict is contrary to law, and particularly to Section 4(f) of the Internal Security Act.
5. The statute under which the defendants were indicted as construed by the Court and as applied by the Court and the jury to the evidence violates the First and Fifth Amendments to the United States Constitution.
6. The Court erred in charging the jury and in refusing to charge the jury as requested.
7. The Court erred in denying defendant's motion to dismiss the indictment.
8. The Court erred in denying defendant's motions to strike the testimony of the witnesses Herron, Meyer and Cummings.
9. The Court erred in admitting the testimony of each and every prosecution witness to which objections were made.
10. The Court erred in admitting the opinion testimony of the witness Lautner.

50 11. The Court erred in admitting in evidence the exhibits offered by the prosecution to which objections were made.

12. The Court erred in denying defendant's request

for the production of certain reports made by the witness Brezk to the Federal Bureau of Investigation concerning matters on which he testified.

13. The Court erred in denying the defendant's request for a bill of particulars.

Defendant requests oral argument on the above motion on February 15, 1955.

Dated this 26th day of January, 1955.

Respectfully submitted,
Joseph E. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

51 IN THE UNITED STATES DISTRICT COURT.
* * (Caption—54-Cr-262) * *

MOTION IN ARREST OF JUDGMENT.

The defendant moves the Court to arrest judgment in this matter for the following reasons:

1. The statute under which the indictment was brought is unconstitutional and the Court is, therefore, without jurisdiction.

2. The indictment does not contain facts sufficient to charge an offense against the United States.

The defendant requests oral argument on the above motion on February 15, 1955.

Dated this 26th day of January, 1955.

Respectfully submitted,
Joseph E. Clayton, Jr.,
John J. Abt,
George W. Crockett, Jr.,
Attorneys for Defendant.

52 And on the same day, to wit, the 26th day of January, 1955 there was filed in the Clerk's office of said Court a certain Verdict in words and figures following, to wit:

53 IN THE UNITED STATES DISTRICT COURT.

* * (Caption—54-Cr-262) * *

VERDICT.

We, the jury, find the defendant, Claude Mack Lightfoot, guilty as charged in the indictment.

Walter J. Stadtler,
Foreman,
Benjamin Williams, Jr.,
Octavia V. Randolph,
Sylvia J. Smith,
Gertrude N. Crawford,
Gunhild M. Chapman,
Seretta R. Isador,
Catharine L. Lee,
Rose M. Vacha,
George W. Jank,
Laurence J. Parmenter,
Jack McGuire.

* * * * *

56 And afterwards, to wit, on the 28th day of January, 1955 being one of the days of the regular January term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

57 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—54-Cr-262) • •

ORDER.

On motion of the Defendant, it is ordered that the "Motion for New Trial" filed in this cause on January 26, 1955, is amended as follows:

In Paragraph No. 18, the word (or proper name) "Lautner" is inserted before the name "Herron".

Philip L. Sullivan,
Judge.

Jan. 28, 1955.

• • • • •

60 And afterwards, to wit, on the 15th day of February, 1955, being one of the days of the regular February term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan District Judge, appears the following entry, to wit:

61 IN THE UNITED STATES DISTRICT COURT.
• • (Caption—54-Cr-262) • •

This cause this day coming on for hearing on the defendant's motions and for judgment and sentence comes the United States by the United States Attorney comes also the defendant Claude Mack Lightfoot in his own proper person and by his counsel and upon due consideration the Court being fully advised in the premises it is

Ordered that the motion of the defendant for judgment of acquittal at the close of the Government's case be and the same is hereby denied, that the motion of the de-

fendant for judgment of acquittal at the close of all the evidence be and the same is hereby denied, that the motion of the defendant for a new trial be and the same is hereby denied and that the motion of the defendant in arrest of judgment be and the same is hereby denied and the defendant being asked by the Court if he has anything to say why the sentence and judgment of the Court should not now be pronounced upon him and showing no good and sufficient reasons why sentence and judgment should not now be pronounced it is therefore considered and

Ordered and Adjudged by the Court and is the sentence and judgment of the Court upon a verdict of guilty heretofore rendered herein that the defendant Claude Mack Lightfoot be and he is hereby committed to the custody of the Attorney General of the United States or his authorized representative for confinement for a period of Five (5) Years and besides that he forfeit and pay to the United States of America a fine in the sum of Five Thousand Dollars ($5,000.00) and to stand committed until such fine is paid or until he shall be otherwise discharged by due course of law and on motion of the defendant that he be released on bail pending an appeal it is

Further Ordered that appeal bond of the defendant be and the same is hereby fixed at the sum of Thirty Thousand Dollars and that the defendant be allowed to remain on his present bond, for a period of Five Days pending the posting of his appeal bond.

Philip L. Sullivan,
United States District Judge.

February 15, 1955.

67 And afterwards on, to wit, the 24th day of February, 1955 came the Defendant by his attorneys and filed in the Clerk's office of said Court his certain Notice of Appeal (Clerk's Certificate of Mailing Attached Thereto) in words and figures following, to wit:

68 IN THE UNITED STATES DISTRICT COURT

For the Northern District of Illinois

Eastern Division

United States of America
vs.
Claude Mack Lightfoot. } No. 54 Cr 262

NOTICE OF APPEAL.

Name and address of appellant:

Claude Mack Lightfoot, 3443 West 12th Place, Chicago, Illinois.

Offense:

Violation of Section 2 of the Smith Act, 54 Stat. 671, Section 2385, Title 18, United States Code.

Judgement and sentence:

Judgement of conviction; sentence of five years' imprisonment and $5000.00 fine, entered February 15, 1955.

Appellant is on bail.

I, the above-named appellant, hereby appeal to the United States Court of Appeals for the Seventh Circuit from the above-stated judgement.

Dated, February 24, 1955.

Claude M. Lightfoot,
Appellant.

69 United States of America, }
Northern District of Illinois, } ss.

(Caption—54-Cr-262)

CERTIFICATE OF MAILING

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify that on February 24, 1955, in accordance with Rule 73(b) of the Federal Rules of Civil Procedure and Criminal Procedure, a copy of the foregoing Notice of Appeal was mailed to:

Honorable Robert Tieken, United States Attorney
450 United States Court House,
Chicago 4, Illinois.

Honorable Kenneth J. Carrick, Clerk,
United States Court of Appeals, Seventh Circuit,
1212 Lake Shore Drive,
Chicago 10, Illinois.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 24th day of February, 1955.

Roy H. Johnson
Clerk,

(Seal)

By Gizella Butcher,
Deputy Clerk.

72 And afterwards, to wit, on the 18th day of March, 1955, being one of the days of the regular March term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Philip L. Sullivan, District Judge, appears the following entry, to wit:

73 IN THE UNITED STATES DISTRICT COURT.

* * (Caption-54-CR-262) * *

ORDER EXTENDING AND FIXING TIME FOR DOCKETING RECORD ON APPEAL.

Upon motion of defendant made this day in open court for an order extending and fixing the time for docketing the record on appeal in this matter pursuant to Rule 73 of the Federal Rules of Civil Procedure, and the Court having heard argument by counsel for the defendant and counsel for the Government and being fully advised in the premises,

It Is Ordered that the time for docketing the record on appeal herein be, and the same is hereby, extended to a period of ninety (90) days from February 24, 1955 the date of the filing of Notice of Appeal herein, that is, until May 25, 1955.

It Is Further Ordered that the Clerk of this Court shall transmit the record on appeal herein to the Court of Appeals not earlier than May 20, 1955 and not later than May 25, 1955.

It Is Further Ordered that the defendant herein shall inform this Court by April 10, 1955 concerning the progress made by him in his efforts to secure counsel to represent him on this appeal.

Entered this 18th day of March, 1955.

Philip L. Sullivan,
United States District Judge.

74 And afterwards on, to wit, the 21st day of March, 1955, came the Defendant-Appellant, by his attorneys and filed in the Clerk's office of said Court his certain Statement of Points and Designation of Record on Appeal. in words and figures following, to wit:

75 **UNITED STATES OF AMERICA.**

Court of Appeals for the Seventh Circuit.

Claude Mack Lightfoot, *Defendant-Appellant,* *vs.* United States of America, *Plaintiff-Appellee.*	District Court No. 54 CR 262

STATEMENT OF POINTS RELIED UPON ON APPEAL.

1. Section 2 of the Smith Act, (Tit. 18, Sec. 2385 U. S. C.) on its face as applied, violates the first and fifth Amendments to the Constitution.

2. Section 2 of the Smith Act, as amended and supplemented by sections 2, 3, 4, and 5 of the Communist Control Act of 1954 (Public Law 637, 83rd Congress) violates the First and Fifth Amendments to the Constitution and is a Bill of Attainder.

3. The indictment and judgement of conviction are barred by section 4(f) of the Internal Security Act of 1950, 50 U. S. C. 783(f).

4. The offense charged in the indictment is barred by the statute of limitations.

5. The verdict was not supported by the evidence.

6. The District Court erred in admitting the opinion testimony of the Government witness, Lautner.

7. The District Court erred in admitting in evidence the following Government Exhibits: No. 18 (Communist Manifesto), No. 19 (Foundations of Leninism), No. 21 (Problems of Leninism), No. 22 (History of the Communist Party Soviet Union), No. 23 (State and Revolution), No. 25 (Left Wing Communism), No. 41 (What Is to Be Done) and No. 48 (Struggle Against Revisionism).

8. The District Court erred in denying defendant's

motion for the production of reports made to the Federal Bureau of Investigation by the Government witness, Brezk.

9. The District Court erred in refusing to give defendant's proposed instruction No. 4 and defendant's alternate proposed instruction No. 4.

10. The District Court erred in denying defendant's motions for judgement of acquittal, for a new trial and in arrest of judgement.

11. The District Court erred in denying defendant's motion for a Bill of Particulars.

76 12. The Verdict is contrary to the Law and the Evidence.

Claude Mack Lightfoot,
Defendant-Appellant, pro se.

Dated this March 21, 1955.

Received a copy of the above document this 21st day of March, 1955.

R. Tieken,
U. S. District Attorney,
James B. Parsons,
Asst. U. S. Atty.

91 And on the same day to wit, the 12th day of May, 1955 there was filed in the Clerk's office of said Court a certain Defendant's Proposed Instructions No. 4, Alternate No. 4, and No. 23, in words and figures following, to wit:

DEFENDANT'S ALTERNATE PROPOSED INSTRUCTION NO. 4.

The defendant submits the following instruction without waiving his objection to the failure of the Court to give Defendant's Proposed Instruction No. 4:

The knowledge which the indictment charges is knowledge by the defendant that within the period from May 14, 1951 to May 14, 1954 at least a substantial proportion of the members of the Communist Party taught and advocated the overthrow and destruction of the Government of the United States by force and violence, as speedily as

circumstances would permit. The teaching and advocacy of the Communist Party, as an organization, or of some of its officers or leaders, cannot be imputed to the members of the Communist Party merely because of their membership.

Therefore, to find that the defendant knew that a substantial proportion of the members of the Communist Party taught and advocated the overthrow and destruction of the Government of the United States by force and violence, as speedily as circumstances would permit, you must find from the evidence to your satisfaction, and beyond a reasonable doubt, that the defendant knew either:

1. That a substantial proportion of the members of the Communist Party personally engaged in such teaching and advocacy; or

2. That a substantial proportion of such members authorized the Communist Party, or its leaders, to engage in such teaching and advocacy on their behalf; or

3. That a substantial proportion of such members ratified such teaching and advocacy by the Communist Party, or its leaders, after knowledge of it.

DEFENDANT'S PROPOSED INSTRUCTION NO. 4.

The knowledge which the indictment charges is knowledge by the defendant that within the period from May 14, 1951 to May 14, 1954 at least a majority of the members of the Communist Party taught and advocated the overthrow and destruction of the government of the United States by force and violence, as speedily as circumstances would permit. The teaching and advocacy of the Communist Party, as an organization, or of some of its officers or leaders, cannot be imputed to the members of the Communist Party merely because of their membership.

Therefore, to find that the defendant knew that at least a majority of the members of the Communist Party taught and advocated the overthrow and destruction of the government of the United States by force and violence, as speedily as circumstances would permit, you must find from the evidence to your satisfaction, and beyond a reasonable doubt, that the defendant knew either:

1. That a majority of the members of the Communist Party personally engaged in such teaching and advocacy; or

2. That a majority of such members authorized the Communist Party, or its leaders, to engage in such teaching and advocacy on their behalf; or

3. That a majority of such members ratified such teaching and advocacy by the Communist Party, or its leaders, after knowledge of it.

DEFENDANT'S PROPOSED INSTRUCTION NO. 23.

In weighing the testimony of witnesses who entered the Communist Party at the request of the FBI, or who are presently in the employ of the Department of Justice, you should consider whether their testimony, in the light of the circumstances, indicates that they might entertain some hope of personal benefit to themselves from a possible conviction in this case through later employment by the Government as a witness in other cases, or otherwise. You may give such effect to these considerations as you may think they deserve.

United States of America,
Northern District of Illinois. } ss.

I, Roy H. Johnson, Clerk of the United States District Court for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled: United States of America, Plaintiff vs. Claude Mack Lightfoot, Defendant, No. 54 CR 262, as the same appear from the original records and files thereof now remaining among the records of the said Court in my office, except the original exhibits which are incorporated herein by direction of this Court.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Chicago, Illinois, this 19th day of May, 1955.

(Seal)

Roy H. Johnson,
Clerk,
By Gizella Butcher,
Deputy Clerk.

[fol. 619] IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

OCTOBER TERM, 1955—JANUARY SESSION, 1956

No. 11470

THE UNITED STATES OF AMERICA, Plaintiff-Appellee

v.

CLAUDE MACK LIGHTFOOT, Defendant-Appellant

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

OPINION—January 12, 1956

Before DUFFY, *Chief Judge*, and LINDLEY and SWAIM, *Circuit Judges*.

DUFFY, *Chief Judge*. Defendant was convicted after a jury trial on a one count indictment which charged violation of the "membership" clause of Section 2 of the Smith Act. 54 Stat. 671, 18 U. S. C. § 2385.[1] The indictment was returned on May 14, 1954 and charged: 1), That, continuously since July 26, 1945, the Communist Party of the United States has been a "society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit." and 2) That, continuously since July 26, 1945, the defend-

1. "* * *

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government (in the United States) by force or violence; or *becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof*—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, * * *"

(The socalled membership clause is the portion italicized.)

ant has been a member of the Communist Party of the United States of America well knowing during all of said [fol. 620] period that said Communist Party "was and is a society group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit."

Defendant moved to dismiss the indictment on the following grounds: 1) Section 2 of the Smith Act and the indictment violate the First and Fifth Amendments; 2) The indictment is barred by Section 4(f) of the Internal Security Act of 1950;[2] and 3) Section 2 of the Smith Act, as supplemented by sections 2, 3 and 4 of the Communist Control Act of 1954,[3] deny the defendant due process by depriving him of the right to a fair and impartial trial. The trial court denied the motion to dismiss.

At the trial, defendant's counsel stipulated that defendant had been a member and an official of the Communist Party during the period covered by the indictment. However, defendant was not a mine-run member of the Communist Party, nor was he an innocent worker, unhappy with his lot, who joined up with the Party in the expectation that it would eventually better his economic position. The evidence disclosed that Lightfoot was an intelligent, dedicated, crusading Communist, who rose to a position of great influence in his Party, not only in the midwest, but also on the national level.

---

[2] Section 4(f) of the Internal Security Act of 1950, Title 50, § 781 *et seq.*, provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. * * *"

[3] Sections 2, 3, and 4 of the Communist Control Act of 1954, 68 Stat, 775-776, 50 U.S.C. 841, 842, 843, find as a fact that the object or purpose of the Communist Party of the United States is to overthrow the government of the United States by force and violence.

The proof was that Lightfoot had been a member of the Communist Party since at least 1934. He was early a Section Organizer for the Young Communist League as well as a member of the District Bureau of that League. In 1936 he was a delegate to the Sixth Congress of the Young Communist International which is affiliated with the World Communist Party. Later, he was a Section Organizer for the Communist Party and was a member of the District Committee of the Illinois-Indiana District of the Party.

[fol. 621] Lightfoot spent considerable of his time in teaching the various doctrines, aims and program of the Communist Party. He taught in Workers Schools as well as a considerable number of inner-party classes. He taught in District Training Schools which were secret schools for hardening and training leadership in Communist activities. These schools were taught only by leading party functionaries. In 1938 and thereafter, he taught under the supervision of the Director of the Chicago Workers Schools and the Educational Director of the Illinois-Indiana District of the Communist Party. He taught such subjects as Marxism-Leninism; History of the Communist Party of the Soviet Union; and other courses relating to the theory and practices of Communism. To teach some of these courses he had to be theoretically skilled in and have detailed information about Communist doctrine.

Lightfoot was early recognized as one of the top Communist leaders of the Illinois-Indiana District, and he functioned for many years as a full-time employee and representative of the Party. He was a paid employee of the Party as early as 1937. He made many speeches upon behalf of the Communist Party, at times speaking in praise of the success of the Russian Revolution under the leadership of Lenin and Stalin. At a party meeting in the Ashland Auditorium in Chicago in 1947, Lightfoot spoke of his experiences before the Illinois Legislative Committee which was investigating subversive activities, and he promised protective secrecy for the party records. At this assembly, he advised the membership on the use of the underground.

At the 1948 State Convention of the Party, Lightfoot was appointed as a regional director of a new party set-up

to brinng about Communist infiltration in the fourteen basic or vital community industries. On November 10, 1950, Lightfoot delivered the principal address at a Communist meeting to celebrate the 33rd anniversary of the Russian Revolution. On various business and public records defendant listed himself as Executive Director of the Communist Party of Illinois, and the Secretary of the Illinois State Committee of the Communist Party. Up to the time of the indictment he handled Communist Party funds for the Illinois group. In 1950 he was elevated to the position of Member of the National Committee of the Communist Party of the United States, a position which he held up to the time of the indictment.

[fol. 622] Defendant moved for a directed verdict and for a judgment of acquittal which motions were denied. Later, he made motions in arrest of judgment and for a new trial which were likewise denied. Defendant urges the verdict and judgment of guilty are not supported by the evidence. Defendant says there was no direct evidence that he had knowledge of any teaching or advocacy of proscribed doctrine by the Communist Party or that he intended to bring about the violent overthrow of the Government of the United States. Defendant insists the Government's case rested entirely upon a series of inferences.

The Government offered evidence both documentary and by expert witnesses which, if believed, proved that for a number of years prior to 1944, and from and after July 26, 1945, the Communist Party of the United States was a political organization dedicated to the principles of Marxism-Leninism, and its aim was the destruction of the existing social order (which it called "Imperialism") as well as the destruction of "Imperialistic Government" including the United States of America. The Party taught that to reach the goal of the "Proletarian Revolution and the Dictatorship of the Proletariat", actual class revolt would be necessary, and violence and bloodshed inevitably would result.

The proof disclosed that the program of the Communist Party in the United States called for the development of a close, well-disciplined organization with a highly trained staff of professional revolutionaries. The ultimate goal

and objective of the Party was unchangeable, but the day-to-day program of activities might change as conditions and circumstances would require. As an illustration, when the United States went to war with Fascist Germany, Hitler was regarded in many parts of the world as the great anti-communist symbol. The revolutionary purposes of the Communist Party in the United States were temporarily abandoned, and a Communist Political Association was organized to take its place. One of the ostensible objectives of the Association was to work for socialism through processes of peaceful change. However, as soon as Hitler was eliminated in 1945, the Political Association was abandoned, and the Communist Party in the United States was reconstituted along the lines of Marxism-Leninism, as an instrument of class war and the dictatorship of the proletariat. The Party went forward with [fol. 623] the program which had been temporarily abandoned, and this program continued during the years covered by the indictment.

Upon evidence very similar to and in many respects identical with that received in the case at bar, the Court of Appeals of the Second Circuit, in *United States* v. *Dennis, et al.*, 183 F. 2d 201, summarized some of the proof as to the organization, aims and activities of the Communist Party in this country, which summary was quoted by the United States Supreme Court in the *Dennis* case on appeal, 341 U.S. 494, 498, as follows:

> "• • • But the Court of Appeals held that the record supports the following broad conclusions: • • • that the Communist Party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double-meaning language; that the Party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party; that the literature of the Party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the Party was, during the period in

question, to achieve a successful overthrow of the existing order by force and violence."

We hold that substantial evidence supports the charge contained in the first paragraph of the indictment, and that the jury was fully justified in finding beyond a reasonable doubt that the Communist Party in the United States has, from and after July 26, 1945, been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit. A number of courts have held that evidence substantially the same to that appearing in the record before us, warranted a similar finding.[4] It might be noted that in the majority opinion in *Schneiderman* v. *United States*, 320 U. S. 118, heavily relied upon [fol. 624] and frequently cited by defendant, the Court said (p. 153), "We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here. * * *."

We next consider whether there was substantial proof in the record that the defendant was a member of the Communist Party well knowing that it taught and advocated the doctrine of overthrowing and destroying the government of the United States by force and violence, and that said defendant intended to bring about such overthrow by force and violence as speedily as circumstances would permit.

The evidence showed that for many years prior to the indictment Lightfoot was completely familiar with the objectives of the Communist Party in the United States, and with the literature of the Party which advocated such

---

[4] *Dennis* v. *United States*, 2 Cir., 183 F. 2d 201, affirmed 341 U. S. 494;

Frankfeld et al. v. *United States*, 4 Cir., 198 F. 2d 679;

United States of America v. *Mesarosh*, 3 Cir., 223 F. 2d 449;

Scales v. *United States*, 4 Cir., F. 2d (decided November 7, 1955).

objectives. Defendant was intimately acquainted with the "classical" writings of Marx, Engels, Lenin and Stalin which advocated the violent overthrow of capitalistic governments as speedily as circumstances would permit. In fact, defendant contributed articles to Party publications which stressed the importance of such "classics" in the Communist program. Perhaps his knowledge is best shown by the fact that Lightfoot was a teacher in the District Training Schools which were the secret schools for training Communist leaders. The teachers in these schools were leading Party functionaries. At no time did Lightfoot disavow the teachings of Communist leaders or writers.

There was direct testimony from the former educational director of the Illinois-Indiana District of the Communist Party that under his direction and supervision Lightfoot taught, among other subjects, Marxism-Leninism, and the History of the Communist Party of the Soviet Union. From the exhibits offered by the Government it appears that Russia, where the existing social order was overthrown by a violent revolution, was held up as an example of what could be accomplished by the Communists in this country.

We hold that the evidence proved that defendant had knowledge that the Communist Party of the United States advocated the overthrow and destruction of the Govern-[fol. 625] ment of the United States by force and violence as speedily as circumstances would permit.

Defendant insists that there is nothing in the record to show that he personally had the specific intent to bring about the overthrow of the government of the United States by force and violence, and he quotes from *Schneiderman* v. *United States*, 320 U. S. 118, 136, that membership in an organization with knowledge of its purposes is not evidence of the member's intent to effectuate such purposes.

We think the evidence was sufficient to prove not only defendant's knowledge that the aim and program of the Communist Party of the United States was the overthrow of our Government by force and violence as speedily as circumstances would permit, but that defendant likewise had such intent. Defendant was well acquainted with the Party doctrine of "Democratic Centralism" which required all members of the Party to accept, without

question, the teachings of the Communist leadership under penalty of severe disciplinary action or expulsion.

"* * * the state of a man's mind must be inferred from the things he says and does." *American Communications Assn. C.I.O., et al.*, v. *Douds*, 330 U. S. 382, 411. The law assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. *Cramer* v. *United States*, 325 U. S. 1, 31. "Actions of the accused are set in time and place in many relationships. Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others, the interchange between him and another, the give and take of the situation." *Cramer* v. *United States*, 325 U. S. 1, 32-33.

Lightfoot's years of devotion to the Communist Party in the United States, and his zeal in obtaining recruits for those doctrines which the Party advocated, and his energy in carrying out the objectives and program of the Party, all were matters properly considered by the jury upon the question of intent. *United States of America* v. *Flynn, et al.*, 2 Cir., 216 F. 2d 354, 360. Furthermore, there was direct evidence that at Lake Ivanhoe School conducted by the Party, while instructing a class on the procedures for [fol. 626] the revolution of the proletariat the defendant stated: "If we have to spill blood, we will."

Although defendant's counsel argues there is no proof of defendant's advocacy or of his belief in the program of the Communist Party to overthrow the Government of the United States by force and violence in what may be an effort of justification in case it was found the defendant did so advocate, he quotes the following statement from Thomas Jefferson: "The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure."[5]

[5] Taken from a private letter to William Smith written in 1787 prior to the adoption of the Constitution of the United States which in Article V made provision for amendment, whereby our form of government could be changed in a peaceful manner

We are satisfied the evidence was ample both to require that the case be submitted to the jury and to sustain the verdict rendered.

Three of defendant's claims of error are: the testimony of the witness Lautner should have been excluded as hearsay; that testimony of the witness Meyer should have been excluded as remote and irrelevant; the excerpts of the "classics" should have been excluded as prejudicial and irrelevant.

John Lautner joined the Communist Party in 1929, and except during his period of army service, was a Communist Party organizer, teacher and leader until January 17, 1950. He has testified in a number of prosecutions under the Smith Act as an expert witness as to the teachings and program of the Communist Party of the United States. It seems clear that he was qualified as an expert witness on the subject about which he testified. In any event, whether the witness was qualified as an expert was a matter confined to the discretion of the trial judge. *Cohen* v. *Travelers Ins. Co.*, 7 Cir., 134 F. 2d 378, 384. No abuse of discretion has been shown. Furthermore, the matters about which he testified were material to the issues of the case at bar. We hold there was no error in receiving Lautner's testimony.

Frank S. Meyer testified that from 1934 to 1942 he had been closely associated with the defendant in the Illinois Communist Party. He testified relative to a conversation with defendant in 1940 with reference to the latter's teaching the History of the Communist Party of the Soviet [fol. 627] Union. Although this occurred some years before the period covered by the indictment, it was admissible to show defendant's knowledge and intent. *United States* v. *Dennis*, 183 F. 2d 201, 231-232; *United States* v. *Mesarosh*, 223 F. 2d 449, 454. As stated by Judge Learned Hand in the *Dennis* case (page 231) "How far back of the commission of the crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence. In the case at bar, there is not the least reason to hold that his discretion was abused. • • •" We hold there was no error in receiving Meyers' testimony.

Defendant also contends that it was error to admit into

evidence excerpts from the Marxism-Leninism "Classics." These so-called "Classics" stress the importance of Marxism-Leninism "as a guide to action" and treat openly the subject of force and violence in the Proletarian Revolution and the establishment of the Dictatorship of the Proletariat. We think these excerpts were admissible not only as probative of the teachings and program of the Communist Party material under paragraph 1 of the indictment, but many of them were directly connected with the defendant in his capacity as teacher in the Party Schools, and were properly admitted as bearing upon his knowledge and intent.

Defendant claims the trial court erred in refusing to order the production of a report made to the FBI by the witness Brzek who was a member of the Communist Party from 1943 to 1947. In the latter year Brzek attended classes taught by defendant Lightfoot at a Communist School conducted in Ivanhoe, Wisconsin. It was at one of these classes Brzek testified that defendant stated: "If we have to shed blood, we will." On cross-examination Bryzek testified he had made a report with reference to said classes to the Milwauke office of the FBI. The report thus made was not in the courtroom, nor did the witness use a copy thereof to refresh his memory. The motion to produce was made after the Government had closed its case. Defendant offered no oral testimony. On his claim of error, defendant relies principally upon *Gordon et al.* v. *United States*, 344 U. S. 414.

In *Gordon* the Court said, pages 418-19: "By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, [fol.628] were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried: * * *."

In the case at bar nothing was developed on cross-examination to the effect that the report to the FBI conflicted with the direct testimony of Brzek. Thus an essential element of the rule stated in *Gordon* was not here present. No proper foundation was laid for the production of the report, and the trial court was correct in deny-

ing the motion to produce. *The United States of America* v. *Echeles*, 7 Cir., 222 F. 2d 144, 152-153; *Starr* v. *Commissioner of Internal Revenue*, 7 Cir., 226 F. 2d 721, 724; *Jencks* v. *United States of America*, 5 Cir., 226 F. 2d 540, 553; *Jencks* v. *United States of America*, 5 Cir., 226 F. 2d 553, 560-561.

Furthermore, we think that the District Court, under the rule stated in *Goldman* v. *United States*, 316 U. S. 129, 132, properly denied the defendant's motions. The Court, in that case, used this language:

> "We think it is the better rule that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them. Where, as here, they are not only the witness' notes but are also a part of the Government's files, a large discretion must be allowed the trial judge. We are unwilling to hold that the discretion was abused in this case."

To the same effect: *Iva Ikuko Toguri D'Aquino* v. *United States*, 9 Cir., 192 F. 2d 338, 375; *Imperatore* v. *United States*, 2 Cir., 193 F. 2d 409, 410; *Neal* v. *United States*, 5 Cir., 203 F. 2d 111, 118; *United States* v. *Mesarosh, et al., D. C. W. D. Pa.*, 116 F. Supp. 345, 349, 350.

A more difficult question is presented by defendant's claim that the membership clause of the Smith Act is unconstitutional on its face and as applied by the trial court. Defendant insists this clause imputes guilt solely by reason of association.

There is no doubt that an individual, or indeed, a group of individuals, may advocate and teach the desirability of a [fol. 629] change in our form of government no matter how unpopular, radical or revolutionary the proposal may be, provided such changes are to be accomplished by processes which the Constitution provides. Had the defendant confined his advocacy and teaching for a change in our form of government within the limits of constitutional processes, he would clearly have been protected by the First Amendment.

Defendant's counsel makes frequent reference to the opinion of the Court in *Schneiderman* v. *United States*,

320 U. S. 118, to demonstrate that guilt is personal, and that members of a party or organization need not necessarily agree with the pronouncements of their leaders. Overlooked or ignored in such argument is the proof in the case at bar showing the rigid discipline imposed on Communist Party members during the period covered by the indictment. The corner-stone Party doctrine of "Democratic Centralism" left no room in the Party for members who might not agree with the program of the overthrow of our Government by force and violence. Party members were bound to accept without question the teachings of the Communist leadership. The defendant was one of the most zealous of those teachers.

The United States Supreme Court has consistently recognized the inherent value of free discourse. However, it is settled that the right to free speech is not an unlimited, unqualified right but, as the Court said in *Dennis*, p. 503: "* * * the societal value of speech must, on occasion, be subordinated to other values and considerations."

Defendant admits that in *Dennis* the Supreme Court sustained the provisions of the Smith Act making it a crime for any person to wilfully and knowingly advocate the overthrow of the Government of the United States by force and violence; to organize or help organize any group which does so; or to conspire to do so.[5] The Court specifically held that a clear and present danger existed. However, defendant argues that the *Dennis* case marks the outermost limit of the Court's sanction of an abridgement of [fol. 630] rights within the area guarded by the First Amendment. Defendant points out that the membership clause of the Smith Act was not an issue in *Dennis*, and insists that in the period covered by the indictment, no clear or present danger existed.

---

[5] The Court did not limit its holding of constitutionality to the organizing clause of this subsection, but held, at page 516:

> "We hold that §§ 2(a)(1), 2(a)(3) and 3 of the Smith Act do not inherently or as construed or applied in this instant case, violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness."

It was in *Schenck* v. *United States*, 249 U. S. 47, 52, that Justice Holmes announced the doctrine that: "* * * The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent." The latest word from the Supreme Court on the subject of clear and present danger appears in the *Dennis* case.

We have before us an example of the ever-recurring problem presented to courts of striking a balance between freedom for the individual and the security for our country and government. "Self-preservation is a high prerogative of any sovereignty." *Communist Party of the United States* v. *Subversive Act Control Board*, 223 F. 2d 531, 543. "There is no constitutional right to 'gang up' on the government." Justice Jackson in *Dennis* v. *United States*, 341 U. S. 494, 577. In *Dennis* the Court, said, p. 501: "No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence." And again, at p. 509: "Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected."

In explaining the phrase "clear and present danger" the Court, in *Dennis*, said at p. 509: "Obviously, the words cannot mean that before the Government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers [fol. 631] to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolutionists, is a

sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt."

In *United States* v. *Flynn*, 2 Cir., 216 F. 2d 354, 367, the Court held that the danger found in the *Dennis* case had not abated by the summer of 1951, the date of the *Flynn indictment*. But defendant argues that at the date of the indictment of the case at bar no shooting war was in progress and, therefore, conditions had changed. Furthermore, at the time of the oral argument before this Court, defendant's counsel seemed to be deeply impressed by the Spirit of Geneva, and he professed to believe that the Geneva Conference had resulted in a complete relaxation of International tensions. The period covered by the indictment is, of course, the critical period for us to consider. However, in any case, whether a clear and present danger existed cannot depend on whether the faces of the Communist Leaders in Russia are suffused with smiles. We need only make passing mention of the fact that at the time of the writing of this opinion, the smiles have been replaced with scowls, and the sugary words of such leaders have been supplanted by words of vituperative condemnation.

Only one other Court of Appeal has passed upon the claim that the membership clause of the Smith Act is unconstitutional. In *Scales* v. *United States*, — F. 2d — (decided November 7, 1955) the Fourth Circuit held the membership clause of the Smith Act to be constitutional. See also *Frankfeld et al.* v. *United States*, 4 Cir., 198 F. 2d 679, 683, 684. We agree with the decision in *Scales*, and hold the membership clause of the Smith Act to be constitutional.

Defendant urges he was deprived of a trial by a fair and impartial jury as a result of the enactment of the Communist Control Act of 1954, wherein Congress declared that the Communist Party advocates the overthrow of the Government of the United States by force and violence. Defendant does not contend that any prejudice on the part [fol. 632] of any of the jurors in this case appears from

the record. Rather, he urges it must be implied that a jury presumed to know the law will not ignore the statutory findings.

In effect, it is defendant's position that all persons subject to prosecution under the Smith Act are immunized from prosecution indefinitely, or at least as long as the Communist Control Act remains a part of the laws of this nation. We do not agree. If any jury had any such prejudgment, the instructions of the Court cured their error. Furthermore, whether any such belief existed in the mind of any juror, might have been discovered on the *voir dire* examination.

Defendant further contends prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act, 50 U. S. C. 783(f), which provides that:

> "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsection (a) or subsection (c) of this section or of any other criminal statute."

Defendant argues that the purpose and intent of the section was specifically to bar prosecution of Communists under the membership clause of the Smith Act.

A similar argument was overruled in the *Scales* case. We quote with approval the following from that opinion:

> "The purpose of this provision, as defendant correctly argues, was to insure the enforceability of the registration provisions of the act by making the privilege against self-incrimination unavailable as a defense to failure to register. The language of the section relied on, however, provides merely that neither holding of office nor membership in a Communist organization shall constitute *per se* a violation of a criminal statute. It does not purport to exempt from criminal liability membership in an organization advocating the overthrow of the government by force and violence where such membership is acquired or held with knowledge of the criminal purpose in which the organization is engaged. In other words, mere membership in the party is not a crime. Membership with knowledge

[fol. 633] of the criminal purpose of the organization remains a crime.

* * * * * * *

"* * * Even though the Communist Party has such purpose, membership *per se* is not made a crime under the Smith Act; and it is only membership *per se*, which is exempted from criminal prosecution under section 4(f) of the Internal Security Act. That no modification of the provisions of the Smith Act was intended by Congress in the passage of the Internal Security Act of 1950 is made abundantly clear by section 17 of the Internal Security Act, 64 Stat. 1003, 50 U. S. C. 795, which provides:

> 'The foregoing provisions of this title shall be in addition to and not in modification of existing criminal statutes.'

In view of this interpretation which Congress itself placed on the statute at the time of its passage, there is no occasion for further discussion as to its effect upon the Smith Act. The charge of the court heretofore quoted, made it clear that defendant could not be convicted because of mere membership in the party."

Defendant claims error was committed in other comparatively minor matters. Suffice to say, we have considered his arguments in respect thereto and find them to be without merit.

The judgment of conviction is

Affirmed.

[fol. 634] UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 11470

THE UNITED STATES OF AMERICA, Plaintiff-Appellee

vs.

CLAUDE MACK LIGHTFOOT, Defendant-Appellant

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

JUDGMENT—January 12, 1956

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, affirmed.

[fol. 635] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 636] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 26, 1956

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted, and the case is assigned for argument immediately following Nos. 308, 309, 310, 547, 566, and 626.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Office - Supreme Court, U. S.
FILED
FEB 1955
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 661334

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

INDEX

	PAGE
Opinion Below	2
Jurisdiction	2
Questions Presented	2
Statutes Involved	3
Statement of the Case	3
The Indictment	4
The Evidence	4
The Conviction and Sentence	11
The Opinion Below	11
Reasons for Granting the Writ	13
I. The decision below that the evidence sustains the verdict is in conflict with applicable decisions of this Court and violates accepted and constitutionally protected standards governing proof of guilt	13
II. The decision below that the membership clause is constitutional on its face and as applied is in conflict with the applicable decisions of this Court and presents constitutional questions which have not been but should be settled by this Court	17
A. The failure of the membership clause to include intent as an element of the offense	17
B. The imputation of guilt solely by reason of association	19
III. The affirmance below of the trial court's denial of petitioner's motion that the court inspect the contemporaneous report made to the F. B. I. by	

PAGE

a prosecution witness concerning the subject matter of his testimony is in conflict with decisions in other circuits and presents a question which should be settled by this Court 24

IV. The decision below sustaining evidentiary rulings of the trial court is in conflict with the decisions in other circuits and a departure from accepted principles applicable to criminal trials 26

A. The Lautner testimony 26

B. The Meyer testimony 27

C. The "classical" literature 28

V. The affirmance below of the trial court's instruction that the teaching and advocacy alleged in the indictment has reference to the teaching and advocacy of the Communist Party as an entity and not to that of the members individually presents a novel and important question of statutory construction which should be decided by this Court 29

VI. The decision below that section 4(f) of the Internal Security Act does not bar prosecution of the offense charged in the indictment presents an important question of federal law which should be decided by this Court 31

VII. The decision below that the findings of the Communist Control Act did not deprive petitioner of the right to a fair and impartial trial presents an important constitutional question which should be decided by this Court 34

Conclusion 35

Appendix A: Opinion Below 37

Appendix B: Statutes Involved 54

CASES

	PAGE
Adler v. Board of Education, 342 U. S. 485	17, 19
American Communications Association v. Douds, 339 U. S. 382	16, 20
Bauingartner v. United States, 322 U. S. 665	16, 19
Boehm v. United States, 123 F. 2d 791	24
Chastleton Corp. v. Sinclair, 264 U. S. 543	23
Communist Party v. Subversive Activities Control Board, No. 48, this term	34
Cole v. Arkansas, 333 U. S. 196	21
Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295	30
Crosby v. Pacific S.S. Lines, 133 F. 2d 470	24
De Jonge v. Oregon, 299 U. S. 353	19
Delaney v. United States, 199 F. 2d 107	35
Dennis v. United States, 341 U. S. 494	13, 14, 17, 21
Federal Trade Commission v. Cement Institute, 333 U. S. 683	28
Frank v. Mangum, 237 U. S. 309	34
Ginsberg & Sons v. Popkin, 285 U. S. 204	34
Gordon v. United States, 344 U. S. 414	24
Hartzell v. United States, 322 U. S. 680	16
Haywood v. United States, 268 F. 795	28
Herndon v. Lowry, 301 U. S. 242	19
Kammann v. United States, 259 F. 192	28
Knauer v. United States, 328 U. S. 654	16, 19, 31

PAGE

Langer v. United States, 76 F. 2d 817 28

Manley v. Georgia, 279 U. S. 1 34

Mesarosh v. United States, No. 566, this term 9, 13, 25, 29

McWhorter v. United States, 281 F. 119 27

Mooney v. Holohan, 294 U. S. 103 35

Moore v. Dempsey, 261 U. S. 86 35

Scales v. United States, No. 626, this term 3, 9, 13, 20, 25, 27, 29, 31

Schneiderman v. United States, 320 U. S. 118 ..... 14, 16, 18, 31

Shelton v. United States, 205 F. 2d 806 25

Sorenson v. United States, 168 F. 785 27

United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344 30

United States v. Blumberg, D. C. E. D. Pa. 3

United States v. De Normand, 149 F. 2d 622 24

United States v. Dennis, 183 F. 2d 201 ..... 26, 28

United States v. Dennis, D. C. S. D. N. Y. 3

United States v. Foster, D. C. S. D. N. Y. 3

United States v. Gates, D. C. S. D. N. Y. 3

United States v. Ginn, 222 F. 2d 289 34

United States v. Hall, D. C. S. D. N. Y. 3

United States v. Hauck, 155 F. 2d 141 16

United States v. LeBron, 222 F. 2d 531 24

United States v. Krulewitch, 145 F. 2d 76 24

United States v. Mesarosh, 223 F. 2d 449 28

United States v. Mesarosh, 116 F. Supp. 345 25

PAGE

United States v. Noto, D. C. W. D. N. Y. 3
United States v. Schneiderman, 106 F. Supp. 731 25
United States v. Simonds, 148 F. 2d 177 24
United States v. Thompson, D. C. S. D. N. Y. 3
United States v. Weiss, D. C. N. D. Ill. E. D. 3
United States v. White, 322 U. S. 694 30
United States v. Winter, D. C. S. D. N. Y. 3
United States v. Yuginovich, 256 U. S. 450 34
Wolf v. United States, 259 F. 388 28
Yates v. United States, No. 308, this term 9, 13, 25, 29

STATUTES

Communist Control Act, 50 U. S. C. 841-43 ..... 3, 33
Immigration and Nationality Act, 8 U. S. C. 1182(a)(28)(F), 1251(a)(6)(F), 1424(a)(4) 30
Internal Security Act
50 U. S. C. 783(f) 3, 16, 31
50 U. S. C. 795 34
National Labor Relations Act, 29 U. S. C. 159(h) 30
Smith Act, 18 U. S. C. 2385 1
28 U. S. C. 1254 2

LEGISLATIVE MATERIALS

96 Congressional Record 32, 33
100 Congressional Record 33

PAGE

Senate Report No. 2369, Part 2, 81st Cong., 2d Sess. 33

Senate Report No. 1365, 81st Cong., 2d Sess. 32

MISCELLANEOUS

President Eisenhower, New York Times, Oct. 21, 1954 23

Webster's New International Dictionary 9

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. .....

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

The petitioner, Claude Mack Lightfoot petitions that a writ of certiorari issue to review a judgment of the United States Court of Appeals for the Seventh Circuit which affirmed a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, convicting the defendant after a jury trial on a one count indictment (R. 3)[1] charging violation of the so-called "membership clause" of section 2 of the Smith Act, 54 Stat. 671, 18 U. S. C. 2385.

[1] We use "R." to designate the printed record from the court below. "App." refers to an appendix to this petition. "G. Ex." designates an exhibit offered by the prosecution and "D. Ex." an exhibit offered by petitioner.

Opinion Below

The opinion of the court below (App. A, *infra*, p. 37) has not yet been reported.

Jurisdiction

The judgment of the court below is dated and was entered on January 12, 1956. Jurisdiction of this Court is conferred by 28 U. S. C. 1254.

Questions Presented

1. Whether the decision below that the evidence sustains the verdict violates accepted and constitutionally protected standards governing proof of guilt.

2. Whether the membership clause of the Smith Act is unconstitutional on its face or as applied in this case.

3. Whether the trial court erred in denying petitioner's motion that the court inspect the contemporaneous report made to the F. B. I. by a prosecution witness concerning the subject matter of his testimony so that it could determine whether the report contradicted the testimony and was therefore material to the defense.

4. Whether the conviction and the affirmance below were based on evidence which should have been excluded as incompetent, irrelevant and remote.

5. Whether the trial court erroneously construed and applied the membership clause of the Smith Act and the indictment in instructing the jury that the teaching and advocacy to which the indictment refers is the teaching and

advocacy of the Communist Party as an entity and not that of the members individually.

6. Whether the immunity conferred by section 4(f) of the Internal Security Act (50 U. S. C. 783(f)) bars prosecution of the offense charged in the indictment.

7. Whether the findings made by Congress in the Communist Control Act with reference to the Communist Party deprived the petitioner of the right to a fair and impartial trial.

Statutes Involved

The Smith Act and the pertinent provisions of section 4(f) of the Internal Security Act of 1950 and of sections 2, 3, and 4 of the Communist Control Act of 1954 are set forth in Appendix B, *infra*, p. 54.

Statement of the Case

This case and *Scales* v. *United States*, No. 626, this term (petition for cert. filed January 16, 1956), involve the first trials under the membership clause of the Smith Act, proscribing membership in a society of persons who teach or advocate the overthrow or destruction of the government of the United States by force or violence with knowledge of the purpose thereof.[2] Both cases present identical questions as to the constitutionality of the statute on its face, the effect of section 4(f) of the Internal Security Act as a bar to the indictments, and the effect of sections 2, 3 and 4 of the Communist Control Act on the right of the petitioners to a fair and impartial trial.

---

[2] Ten additional indictments under the membership clause are pending in the District Courts. *United States* v. *Blumberg*, E. D. Pa.; *United States* v. *Noto*, W. D. N. Y.; *United States* v. *Weiss*, N. D. Ill.; *United States* v. *Dennis*, *United States* v. *Gates*, *United States* v. *Winter*, *United States* v. *Davis*, *United States* v. *Hall*, *United States* v. *Thompson*, *United States* v. *Foster*, all S. D. N. Y.

The Indictment.

The indictment (R. 3), returned on May 14, 1954, charges in two paragraphs of a single count:

1. That, continuously since July 26, 1945, the Communist Party of the United States has been "a society, group and assembly of persons who teach and advocate the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit."

2. That, continuously since July 26, 1945, the petitioner has been a member of the Communist Party "well knowing" that it is a society, group and assembly of persons who teach and advocate the doctrine alleged in paragraph 1, "and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit."

The Evidence.

Petitioner's membership in the Communist Party during the indictment period was conceded (R. 10). The issues of fact for the jury were therefore whether petitioner had the knowledge and intent charged in the indictment within the three year statutory period immediately preceding its return.

The prosecution called eight witnesses whose testimony is material.[3] All were former members of the Communist Party. Five had joined at the request of and had received monies from the F. B. I. to spy on the organization.[4] A

---

[3] In addition, four witnesses identified documents which established that, as conceded, petitioner was a member and officer of the Communist Party during the indictment period (R. 16-28; G. Exs. 1-16). The testimony of two other prosecution witnesses was stricken (R. 31, 472).

[4] Herron (R. 34, 52), Cummings (R. 434), Czarnowski (R. 317, 387-89), Ondrejka (R. 303), and Brzek (R. 452, 463).

sixth, the "expert," Lautner, is a full-time professional witness for the Department of Justice in anti-Communist cases (R. 215).

Petitioner's affirmative case was confined to the introduction of one exhibit and the reading of portions of exhibits offered by the prosecution (D. Ex. 3; R. 473, 476-79, 474-75, 479-80, 486-87).

In what follows, we summarize the evidence.

(1) Acts and Declarations of the Petitioner.

All that the evidence established with reference to the petitioner was (a) that for many years he had been a member and officer of the Communist Party and had taught in its schools; (b) that he knew that the Communist Party based itself on the principles of Marxism-Leninism, and (c) that he was an adherent of these principles and was familiar with the excerpts from the "classical" writings of Marx, Engels, Lenin and Stalin offered in evidence by the prosecution. There was no evidence (and the opinion below cites none) that the defendant or any other American Communist had ever said or written that he or the Communist Party advocated the violent overthrow of the government or that he understood the principles of Marxism-Leninism as including such advocacy.

The testimony of four prosecution witnesses was confined to describing petitioner's attendance at meetings where he or other Communists spoke.[5] If this testimony is accepted in its entirety, it establishes no more than that the petitioner and other speakers called for the building of the Communist Party, particularly among the Negro people and working people; urged Communists to work more effectively in trade unions and veterans organizations; expressed their desire for and confidence in the eventual

[5] Herron, Cummings, Ondrejka and Czarnowski. Only three of the sixteen meetings they testified about took place within the three years next preceding the indictment (R. 307-10, 334-35, 370-72).

establishment of socialism in this country; praised the Soviet Union and its leaders, and opposed the cold war policies of the Truman administration. Additionally, at a meeting in 1947, petitioner was said to have stated that he would not make organization records available to a legislative investigating committee, and to have advised Communists not to reveal their membership publicly if to do so would jeopardize their positions in the community[6] (R. 43-44, 305-310, 334-35, 346-64, 370-72, 437-38).

The witness, Meyer, worked closely with the defendant in the Chicago Communist Party from 1934 to 1942 (R. 61, 110). From 1938 to 1941 Meyer was the director of a Communist Party school where petitioner taught courses on Marxism-Leninism, the History of the Communist Party of the Soviet Union and political economy (R. 63, 68). Meyer testified that he made it a practice to attend petitioner's classes once or twice each term (R. 68). However, he was not asked and did not testify as to what petitioner taught.

Early in 1940, Meyer and petitioner held a series of discussions in connection with a revision of teaching methods in the advanced political courses in the school. Meyer testified that they discussed the content and use of textbooks, including the *History of the Communist Party of the Soviet Union* and the "classical" writings of Marx, Engels, Lenin and Stalin, excerpts from which were later introduced by the prosecution (R. 96-108). He testified that the discussions resulted in agreement upon what should be taught and how it should be taught (R. 97). However, he was not questioned and did not testify about the content of the agreed-upon teaching or concerning petitioner's interpretation of the text books or his understanding of the application of their contents to the United States. Nor, with a single irrelevant exception (R. 114-15) did the witness

[6] The court below characterized the latter statement as advice to "the membership on the use of the underground" (App. A, *infra*, p. 39).

testify to the content of any conversation with or statement by the defendant during the eight years of their intimate association. Petitioner's objections to Meyer's testimony as remote and irrelevant were overruled (R. 62, 125-26).

The witness, Miss Skinner, testified that in 1946 she had taken a course in the fundamentals of Marxism taught by the petitioner and had attended a 1947 school where he taught classes in "strategy and tactics" and "history and role of the Party" (R. 450). She was not questioned and did not testify about petitioner's teaching in these classes.

The witness, Brzek, who joined the Communist Party to spy on it at the request of the F. B. I. (R. 452), testified that he, like Miss Skinner, had attended the 1947 school. It is impossible to paraphrase his semi-literate and frequently unintelligible story (R. 460-62) as to petitioner's alleged teaching there.[7] The opinion below (App. A, *infra*, p. 44) relies on petitioner's supposed statement that "if we have to spill blood, we will," as evidence of an intent to overthrow the government by force and violence as soon as circumstances permit. Any conceivable support which this alleged statement might lend to the conclusion of the court below collapses when the words are read in the context from which they were torn. The witness' full rendering of petitioner's alleged statement was as follows (R. 462):

> "He approached us again with, as I remember it, that we will try to avoid bloodshed and we will approach it to avoid bloodshed.
>
> "However, we will not be pushed off. If we have to spill blood, we will."

At most, these words state the view that a resort to force may be necessary to effectuate the will of the majority if, at some future time, peaceful channels for social change are no longer open. As the trial judge instructed the jury

---

[7] E.g., he quoted petitioner as saying, "The bloodshed end, the bloodshed, it wouldn't be by, say, shooting firearms, to be by a more quiet method" (R. 462).

(R. 583) the teaching of that view is not proscribed by the Smith Act.

Brzek testified that he had made a written report to the F. B. I. on the teaching of the petitioner at the 1947 school (R. 467-68). The trial court denied petitioner's motion that the report be produced for inspection by the trial judge so that he might determine whether it contradicted the testimony of the witnesses and was therefore material to the defense (R. 468-69, 472).

The only other evidence concerning the petitioner consisted of a number of his published speeches and writings, introduced by the prosecution, which discuss methods for building the Communist Party and topical political questions (G. Exs. 57, 58, 59, 60, 63, 64, 66; R. 344-45, 363, 374-80). None of them so much as suggests the means by which their author believed that socialism can or should be brought about in this country. They contain the only evidence in the entire record of petitioner's understanding of the meaning and application of the principles of Marxism-Leninism to which he avowed adherence. The petitioner wrote (R. 475, emphasis supplied):

> "Marxism-Leninism gives us the power of orientation. It enables us to perceive the direction in which things are heading. *It does not, nor can it determine, for us beforehand, the form nor the exact time of a new social development.*"

(2) The Lautner Opinion Testimony.

Lautner, whose only contact with the defendant was in once "checking him in" as a convention delegate (R. 170), testified as an "expert" for the prosecution.[8]

Over petitioner's objection that the testimony was incompetent and irrelevant, Lautner was permitted to give

---

[8] Lautner did not consider himself an expert on Marxism-Leninism and testified that even those who believe themselves to be experts sometimes disagree as to the meaning and application of Marxist principles (R. 273-75).

his opinion as to the meaning of Marxism-Leninism and the aims and objectives of the Communist Party (R. 205, 210).[9] He did not testify that Marxism-Leninism or the Communist Party advocated the violent overthrow of the government.[10] He stated that the "final aim" of the Communist Party "is the destruction of the existing social order known as imperialism * * * and its governments, and instituting instead through the proletarian revolution and the dictatorship of the proletariat, socialism" (R. 211).[11] Any possible ambiguity in this statement was cured on cross examination when Lautner testified that it was the position of the Communist Party that if socialism could not be established in this country by peaceful, electoral means, it would only be because the trusts and monopolies would use force and violence to prevent this result (R. 281).

(3) The "Classical" Communist Literature.

Over the petitioner's objections, the trial court admitted into evidence excerpts from the writings of Marx, Engels,

---

[9] He was permitted to testify as to the party's current aims and objectives notwithstanding that his only knowledge of its advocacy or activity subsequent to his expulsion in 1950 was derived from reading its publications. Thus he did not believe himself qualified to state whether or not the *History of the Communist Party of the United States* by William Z. Foster, its chairman, contained an authoritative statement of the position of the organization in 1952, when the book was written, on the form which the transition to socialism would take in the Untied States (R. 172, 288-89, D. Ex. 3).

[10] In this respect, Lautner's testimony differed sharply from that given by him in other Smith Act cases, including those now before the Court. *Yates* v. *United States*, No. 308 (cert. granted Oct. 17, 1955); *Mesarosh* v. *United States*, No. 566 (cert. granted Dec. 12, 1955), and *Scales* v. *United States*, *supra*.

[11] As the trial court instructed the jury (R. 583) the words "revolution" and "destruction" do not imply the use of force or violence. "Revolution" is defined as "a radical change in social or government conditions". Webster's *New International Dictionary*. And the Smith Act itself speaks of the "destruction of any such government *by force or violence*".

Lenin and Stalin,[12] the *History of the Communist Party of the Soviet Union*, by Soviet authors dealing with the history of the Russian Communist Party and its predecessors from 1883 to 1937 (G. Ex. 22), and an article written by William Z. Foster in 1945 (G. Ex. 48). Some of these excerpts, including the Foster article, were in no way connected with the petitioner but were referred to by Lautner as "documenting" his opinion as to the meaning of Marxism-Leninism (R. 206-09) and were received for the limited purpose of their relevance, if any, to such opinion testimony (R. 227). Other excerpts were admitted on the basis of the testimony of Meyer that he had discussed them with the petitioner (R. 72, 80-81, 97-108, 228-31). As we have seen, however, there was no testimony by Meyer or any other witness as to the petitioner's interpretation of these excerpts or as to the use he made of them in his teaching.

(4) The Current Teaching and Advocacy of the Communist Party.

Apart from Lautner's opinion testimony, the only evidence in the record concerning the teaching and advocacy of the Communist Party on the transition from capitalism to socialism in the United States is contained in two exhibits.

The first, the current party constitution, introduced by the prosecution, states that the ultimate objective of the organization is "the establishment of socialism by the free choice of a majority of the American people." It further provides for the expulsion of any member "who advocates force and violence or terrorism" (R. 479).

---

[12] The books from which these excerpts were taken and their original publication dates are: Marx and Engels, *The Communist Manifesto*, 1848 (G. Ex. 18); Lenin, *What Is To Be Done*, 1902 (G. Ex. 41); Lenin, *State and Revolution*, 1917 (G. Ex. 23); Lenin, *Left Wing Communism*, 1920 (G. Ex. 25); Stalin, *Foundations of Leninism*, 1924 (G. Ex. 19); Stalin, *Problems of Leninism*, 1926 (G. Ex. 21).

The second exhibit is the *History of the Communist Party of the United States*, by William Z. Foster, published in 1952, and identified by a prosecution witness as containing an authoritative statement of the position of the Communist Party on various questions of the day (R. 426-27). The book contains a detailed outline of the party's teaching and advocacy concerning what the author calls "the American road to socialism," involving the transition from capitalism to socialism by peaceful, democratic processes (R. 476-79).

The prosecution offered no evidence to contradict the unequivocal statements contained in the constitution and the Foster book. Nor did it offer evidence that these statements were not intended to mean or were not understood by the petitioner to mean exactly what they say. On the contrary, as we have seen, the testimony of the prosecution's own expert fully corroborated this documentary evidence.

The Conviction and Sentence.

The trial judge reserved decision on petitioner's motion for judgment of acquittal until after the verdict. He stated however that he felt himself bound by the decisions in Smith Act conspiracy cases which, as he put it, "modified the rules of evidence that I have known anything about for the last number of years" and changed the law as he had practiced it during his many years on the bench (R. 472-73, 480-81).

Accordingly, after the return of the verdict, he denied petitioner's motion and imposed sentence of five years' imprisonment and a fine of $5,000 (R. 610-11).

The Opinion Below.

The opinion below holds that the evidence was sufficient to sustain the verdict. It premises this conclusion on a finding that the Communist Party currently advocated the violent overthrow of the government as speedily as circum-

stances would permit. The only evidence it cites in support of this finding consists of excerpts from the "classical" writings of Marx, Engels, Lenin and Stalin which it believes contain such advocacy (App. A, *infra*, p. 46). Thus, the opinion imputes to the Communist Party advocacy of the court's interpretation of political theories advanced by foreign Communists a quarter of a century to a century ago. It ignores the testimony of the prosecution's "expert" and the only writings on the subject by American Communists which are in evidence, all of which establish that the Communist Party currently advocated the achievement of its socialist objective by peaceful and democratic means.[13]

The opinion then finds that petitioner had knowledge that the Communist Party taught and advocated proscribed doctrine. The only evidence on which it relies for this conclusion is that petitioner was an active member and officer of the organization, was familiar with the "classical" literature, urged its study, and taught in Communist Party schools. From these bare facts, the opinion imputes to petitioner knowledge of the teaching and advocacy which it imputes to the Communist Party.[14] From the same facts, and from the statement attributed to petitioner by Brzek, the opinion also imputes to petitioner a specific intent to bring about the violent overthrow of the government as speedily as circumstances would permit. (App. A, *infra*, p. 44.)

We later discuss those portions of the opinion which sustain the constitutionality of the statute, reject petitioner's contentions with reference to section 4(f) of the In-

[13] The opinion also disregards the warnings of the "classical" authors on whom it relies that Marxism is not a dogma and that its application is always dependent upon historical conditions prevailing at the time and place in question (see e.g., R. 474-75).

[14] The opinion disregards the only evidence as to the defendant's understanding of the application of Marxism-Leninism, i.e., that "It does not, nor can it, determine for us beforehand, the form nor the exact time of a new social development" (R. 475).

ternal Security Act and the Communist Control Act, and affirm the evidentiary rulings of the trial court which petitioner urged required a reversal.

Reasons for Granting the Writ

I. The decision below that the evidence sustains the verdict is in conflict with applicable decisions of this Court and violates accepted and constitutionally protected standards governing proof of guilt.

This case presents, in the sharpest and most exaggerated form, the question whether Communist defendants in Smith Act cases are to enjoy the benefit of accepted and constitutionally protected standards of proof.[15]

Under the terms of the membership clause and by virtue of constitutional considerations,[16] the conviction of the petitioner, an acknowledged member of the Communist Party, required proof: (1) That, to his knowledge, the Communist Party was a society of persons who advocated the proscribed doctrine; (2) that, to his knowledge, such advocacy was couched in language of incitement and was engaged in with the intention of causing the violent overthrow of the government "as speedily as circumstances would permit;"[17] and (3 that petitioner himself had the specific intent of bringing about such violent overthrow "as speedily as circumstances would permit."[18]

---

[15] The Court has recently agreed to consider questions concerning the nature of the evidence required to sustain convictions in Smith Act conspiracy cases. *Yates* v. *United States* and *Mesarosh* v. *United States*, both *supra*. The petition for certiorari in *Scales* v. *United States* raises similar questions under the membership clause. The court below cited the *Mesarosh* and *Scales* cases in support of its decision that the evidence sustains the verdict.

[16] See *Dennis* v. *United States*, 341 U. S. 494.

[17] The trial judge so instructed the jury (R. 576, 581-82).

[18] We later urge (*infra*, p. 17) that the membership clause is unconstitutional on its face because it does not make intent an element of the offense.

Accepting the testimony of the prosecution witnesses in its entirety, there is no evidence which could conceivably support any of these propositions, let alone all of them.

The evidence presented by the prosecution spanned 19 years of the petitioner's life and membership in the Communist Party and dealt with his public speeches, writings, classroom teaching and private conversations during that period. Yet the prosecution produced no evidence that petitioner had ever said or written a word in which he advocated the violent overthrow of the government or expressed an opinion that the Communist Party advocated such overthrow. Nor was there any evidence that any officer or member of the Communist Party ever said or wrote that he or the organization advocated violence.

Nevertheless, the court below held that the evidence was sufficient to establish guilt. Its conclusion as we have seen (*supra*, pp. 11-12), was arrived at by piling unwarranted inference on inference. The court's theory that guilty knowledge could be established by imputing its interpretation of the "classical" literature first to the Communist Party and then to the petitioner was palpably erroneous.

Dennis held (at 501-02) that the peaceful study, discussion and teaching of the writings of Marx, Engels, Lenin and Stalin is not and cannot be proscribed. Yet, there is not a scintilla of evidence in the record that petitioner or the Communist Party did more. *Schneiderman* v. *United States*, 320 U. S. 118, 154-55, characterized the excerpts from the "classics" on which the court below relied as "over-exaggerated polemics bearing the imprint of the period and place in which written," and held that the views which they expressed could not be imputed to a member of the Communist Party merely by virtue of active membership and familiarity with the texts. *Schneiderman* further held (at 157-59) that these excerpts are susceptible of an innocent interpretation and that where two interpretations of an organization's program are possible, the courts are

not justified in "imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation." The opinion below cites no such overt acts, and there were none.

Moreover, it is a far cry from the finding of the court below that the "classics" advocate violent revolution to the conclusion that the political polemics of German and Russian Communists, written from thirty to one hundred years ago, are current incitements to the violent overthrow of the United States government "as speedily as circumstances will permit." In fact, the opinion below makes no attempt to bridge this gap. It simply ignores the existence of the requirement which, as the jury was instructed, limits the advocacy proscribed by the Smith Act to incitements to action as soon as action is feasible.

Thus the inference of guilty knowledge indulged in by the court below would have been invalid even in the absence of countervailing evidence. In fact, the record affirmatively establishes petitioner's innocence. The Lautner testimony and the statements in the party constitution and the Foster book (*supra*, pp. 9-11), none of which was contradicted, prove for the purposes of this case that the Communist Party advocated a peaceful path to socialism. Furthermore, the Lautner testimony (R. 277-78) and the only evidence in the record as to petitioner's understanding of Marxism-Leninism (*supra*, p. 8) show that both he and the Communist Party agree with the strictures of the Court in *Schneiderman* against a dogmatic reading of the "classical" literature of Communism or their mechanical application to situations outside of the historical context in which they were written.

Accordingly, the evidence not only fails to support but refutes the charge of guilty knowledge. The case for conviction is, if possible, even weaker on the issue of petitioner's intent. Membership in an organization with knowl-

edge of its purpose does not establish the member's intent to effectuate the purpose. The member's alleged state of mind must be proved independently. *Schneiderman* v. *United States, supra* at 136; *Knauer* v. *United States*, 328 U. S. 654, 669; *Baumgartner* v. *United States*, 322 U. S. 665; *United States* v. *Hauck*, 155 F. 2d 141, 144.

Such proof is completely lacking here.[19] The court below quotes the statement in *American Communications Association* v. *Douds*, 339 U. S. 382, 411, that "the state of a man's mind must be inferred from the things he says and does." But it can cite nothing that defendant said or did beyond his active membership in the Communist Party and the statement attributed to him by Brzek (*supra*, p. 7) which —if made—was entirely consistent with innocence (App. A. *infra*, p. 44).

Whatever the personal views of jurors and judges as to the advocacy of the Communist Party and the intent of its members, and whatever the findings of courts in other Smith Act cases, the petitioner was entitled to be adjudged solely on the record in *this* case. On that record, the conviction cannot stand. The court below sustained it only by disregarding the presumption of innocence, the principle that guilt is personal, the constitutional protection accorded expression and association,[20] and the provision of section 4(f) of the Internal Security Act that the holding of office or membership in a Communist organization shall not per se constitute a violation of any criminal statute.

In these aspects, the decision below presents questions of fundamental importance to the administration of justice which require review.

---

[19] Cf. *Hartzell* v. *United States*, 322 U. S. 680, in which the Court reversed a conviction for lack of proof of the requisite specific intent where the evidence went far beyond anything that appears in this record.

[20] We later show (*infra*, pp. 21-23) that in addition to all of its other infirmities, the evidence wholly fails to satisfy the clear and present danger test.

II. The decision below that the membership clause is constitutional on its face and as applied is in conflict with the applicable decisions of this Court and presents constitutional questions which have not been but should be settled by this Court.

The advocacy and organizing provisions of the Smith Act, sustained in *Dennis* v. *United States*, 341 U. S. 494, punish individuals for their own advocacy or conduct. The membership clause, on the other hand, does not penalize the accused for his own advocacy but for the advocacy of others in the group of which he is a member. It is not advocacy but association which the clause makes criminal. The crime involves no overt act beyond the act of becoming or remaining a member of the group. An accused may be convicted notwithstanding that his membership is completely passive.

The court below, failing to consider the differences between the provisions of the Smith Act involved here and in *Dennis*, holds that *Dennis* is decisive of the validity of the membership clause (App. A, *infra*, p. 49). This is plainly not the case. On the contrary, under the rationale of the *Dennis* decision, the membership clause is unconstitutional on its face and as applied in this proceeding.

A. The failure of the membership clause to include intent as an element of the offense.

The membership clause does not require proof of the accused member's intent. Accordingly, a member may be convicted despite the fact that he is not an adherent of the proscribed doctrine. His knowledge of its advocacy by other members is alone sufficient to condemn him. In this respect, the statute violates the First Amendment and due process. *Dennis* v. *United States*, supra, at 515-16. And cf. *Adler* v. *Board of Education*, 342 U. S. 485, 494-96, where the Court sustained the New York Feinberg Law

only because that statute does not make membership in an organization which advocates violent overthrow, accompanied by knowledge of such purpose, conclusive evidence of ineligibility to teach in the public schools, but affords the accused teacher a hearing in which he may rebut the inference that he supports the proscribed purpose.

The indictment (R. 3) seeks to remedy the fatal defect in the membership clause by charging that the petitioner intended to bring about violent overthrow as soon as circumstances would permit. This attempt to import a specific intent into the statute is based on a fallacious application of *Dennis*.

Dennis held (at 499) that an intent to overthrow the government by violence was a necessary (although unexpressed) element of the crimes defined in the advocacy and organizing provisions of the Smith Act because,

> "Congress was concerned with those who advocate and organize for the overthrow of the government. Certainly those who recruit and combine for the purpose of advocating overthrow intend to bring about overthrow."

However, the nexus between overt act and criminal intent which was the foundation for the conclusion in *Dennis* does not exist in the case of the membership clause.

For example, it is well known, and the evidence here abundantly establishes (e.g., R. 402-07), that the Communist Party advocates many objectives which are concededly legitimate and shared by non-Communists. Individuals may be attracted to and may join the organization because they believe in and desire to support these innocent objectives and without any intention of overthrowing the government. It is because of this obvious fact that the Court has held that an intent to effectuate an alleged evil purpose of an organization (including the Communist Party) cannot be imputed to a member merely by virtue of his membership with knowledge of such purpose. *Schneiderman* v.

United States, *Knauer* v. *United States*, *Baumgartner* v. *United States*, *Adler* v. *Board of Education*, all *supra*.

The Smith Act itself recognizes the distinction between overt acts which can be said to carry their own specific intent and those which plainly cannot. For it makes the publication or distribution of literature containing proscribed advocacy a crime only when accompanied by a specific intent to overthrow the government. It seems clear, therefore, that the omission of a similar intent requirement from the membership clause was deliberate.[21]

B. The imputation of guilt solely by reason of association.

Even if the membership clause could be said to import criminal intent as an element of the offense, it would nonetheless be invalid because it imputes guilt from association which is not accompanied by any overt act of wrong-doing.

Two decisions of the Court are decisive of the unconstitutionality of legislation penalizing membership in the Communist Party (which was assumed, for the purpose of the decisions, to advocate violent overthrow) when unaccompanied by any illegal act or illicit advocacy. *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242. In both cases, much more was shown as to the activities of the defendants on behalf of the Communist Party than the passive membership which is sufficient under the membership clause. *De Jonge* was decided without reference to the defendant's knowledge of the advocacy of seditious doctrine by the organization or to his intent. It held (at 364-66) that the conclusive fact for constitutional purposes was that the defendant had not engaged in incitement to violence or crime. In *Herndon* (at 260-61), the defendant was assumed to have had knowledge of the organization's alleged seditious advocacy, but the Court reversed in the absence of proof of personal advocacy or acts of violence on his part.

---

[21] The court below, like the court in *Scales*, sustained the statute without discussing the effect of omitting the element of intent.

The decision in *American Communications Association* v. *Douds*, 339 U. S. 382 clearly foreshadows the unconstitutionality of the statute involved here. For the membership clause contains all the vices which the Court held (at 402-04) would invalidate legislation penalizing membership in the Communist Party. (See also, Mr. Justice Jackson's partial concurrence, *id.*, 434.)

The opinion below makes no reference to the foregoing decisions. It states (App. A, *infra*, p. 48):

> "Had the defendant confined his advocacy and teaching for a change in our form of government within the limits of constitutional processes, he would clearly have been protected by the First Amendment."

Thus the court decided the case as though it had arisen under the advocacy provisions of the Smith Act, ignoring the fact that the offense defined in the membership clause and charged in the indictment does not involve advocacy by the accused but rests solely on association.[22]

The court below also expressed agreement with the opinion in the *Scales* case, *supra*, sustaining the constitutionality of the membership clause (App. A, *infra*, p. 51). The *Scales* opinion (Appendix A to petition for cert., p. 33) treats the membership clause as a statute that punishes conspiracies to overthrow the government. By eliminating advocacy from the statute, the court in *Scales* dispensed with the embarrassing necessity of considering the effect of the First Amendment. And by importing conspiracy into the statute, the court was able, at all events, to equate it with the conspiracy considered in *Dennis*. Plainly, there is no warrant in the membership clause for either of these steps. Even if there were, a reversal would be necessary. For if the opinion in *Scales* is right, the petitioner was convicted of a crime with which he was not charged, for which

[22] Moreover, as we have shown (*supra*, p. 14) there was no evidence that petitioner had ever advocated violence, and the court cited none.

he was not tried, and which was not proved. *Cole* v. *Arkansas*, 333 U. S. 196.

C. The absence of a clear and present danger.

On its face and as applied, the membership clause fails to satisfy the clear and present danger test as it was formulated in the *Dennis* decision.

Dennis emphasized the nature of the overt acts of advocating and organizing for overthrow with which the defendants were charged and what it characterized (at 511) as the "highly organized conspiracy" of which they were the leaders. It stated (*id.*) that, "It is the existence of the conspiracy which creates the danger." The membership clause, however, contains none of these elements. Since it does not involve a conspiracy, the factor which the Court held created the danger is utterly lacking. The accused need not be a leader, but may be a rank and file member of the organization. He need not have engaged in any overt act other than the act of becoming or remaining a member. Indeed, since organizing and advocacy are prohibited by other provisions of the Smith Act, the thrust of the membership clause is against passive members or those whose activity is confined to legitimate advocacy.

The membership of a single individual whose activity is so confined cannot possibly be said to create a clear and present danger to the government of the United States. Nor does the addition of such subjective factors as knowledge and intent (if the latter can be imported into the statute) in any way increase the "danger" in the absence of conduct beyond the bare act of association.[23]

---

[23] Since the membership clause is directed against individual membership, the question whether the organization presents a clear and present danger does not arise. That question would be relevant, if at all, only to legislation imposing sanctions on the organization or those who engage in organizing it.

The Court in *Dennis* (at 516) stated that its decision turned on "the intent of the defendants, the nature of their activities" and "their power to bring about the evil." The membership clause authorizes the conviction of an accused who has engaged in no activities and who is powerless to bring about the evil. As we have shown, it does not even require proof of intent. Accordingly, under the standards laid down in *Dennis*, the clause is unconstitutional on its face.

Even if the membership clause could be said to be intrinsically valid, its application to petitioner was unconstitutional. The issue under the clear and present danger test, as applied by *Dennis* to a Smith Act indictment, is whether the conduct of the defendant, in the light of the domestic and international situation existing at the time of the indictment, gave rise to a clear and present danger of the violent overthrow of the government.[24]

The evidence concerning petitioner's activities during the three years preceding the indictment showed only that he had been a member and officer of the Communist Party, had spoken at three meetings (R. 307-10, 334-35, 370-72) and had written three articles (G. Exs. 59, 64, 66; R. 345, 379-80). As we have seen (*supra*, p. 8), these speeches and articles contained nothing but legitimate political advocacy. Under no circumstances could they be even remotely "dangerous."[25]

Moreover, the international setting in May 1954 when the indictment was returned was very different from that in the period of the Berlin air lift and the wars in Korea and Indo-China. At and since the date of the indictment, there

[24] It was the "highly organized conspiracy" of the *Dennis* defendants coupled with the "inflammable nature of world conditions" and "the touch-and-go nature of our relations with other countries" in the summer of 1948 that the Court found (at 511) created the danger.

[25] As the record establishes, petitioner's activities prior to the three-year period were equally devoid of "danger".

has been "no active battlefield anywhere in the world," [26] international tensions have relaxed, and, as our government leaders have reiterated, the danger of war has materially diminished.[27]

Accordingly, neither of the factors which were held to supply the constitutional foundation for the decision in *Dennis* is present on this record.

The court below, disregarding the distinctions between this case and *Dennis*, relied on the latter as authority for the conclusion that the membership clause, on its face and as applied here, satisfies the clear and present danger test (App. A, *infra*, p. 50). The court also relied on the opinion in *Scales* which, as we have seen, holds that the membership clause does not involve conduct protected by the First Amendment and hence that the clear and present danger test is inapplicable (Appendix A to petition for cert., p. 36).

The fundamental constitutional questions decided below demand review. We believe that *Dennis* was wrongly decided and share the hope expressed by Mr. Justice Black (at 581) that "in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society." But whatever its ultimate fate may be, the *Dennis* decision provides no warrant for the constitutionality of the membership clause or for the affirmance of a conviction thereunder on a record devoid of evidence of illicit advocacy, incitement to violence or evil knowledge or intent, and in context of a world situation which offers the hope of durable peace.

---

[26] President Eisenhower, *N. Y. Times*, Oct. 21, 1954.

[27] On the effect of this change in conditions since the *Dennis* decision. Cf. *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543.

III. The affirmance below of the trial court's denial of petitioner's motion that the court inspect the contemporaneous report made to the F. B. I. by a prosecution witness concerning the subject matter of his testimony is in conflict with decisions in other circuits and presents a question which should be settled by this Court.

As we have been (*supra*, p. 8), the informer, Brzek, admitted making a contemporaneous report to the F. B. I. concerning a 1947 classroom lecture by petitioner about which the witness testified. The trial court denied petitioner's motion that the prosecution produce the report for inspection by the judge so that he might determine whether it contradicted the testimony and should be made available to the defense (R. 467-69, 472). This action was erroneous and required a reversal.[28]

If Brzek's F.B.I. report in fact contradicted his testimony, petitioner was entitled to have it for use in cross-examination and introduction in evidence. *Gordon* v. *United States*, 344 U. S. 414, 417. Obviously, the report iself contained the best if not the only available evidence as to the existence of a contradiction. Accordingly, as the courts in other circuits have held under identical circumstances, petitioner was entitled to have the trial judge inspect the report and determine whether it discredited the testimony and was therefore material to the defense. *United States* v. *Le Bron* (C. A. 2), 222 F. 2d 531, 537; *United States* v. *Krulewitch* (C. A. 2), 145 F. 2d 76, 78; *United States* v. *De Normand* (C. A. 2), 149 F. 2d 622, 625; *United States* v. *Simonds* (C. A. 2), 148 F. 2d 177, 179; *Boehm* v. *United States* (C. A. 8), 123 F. 2d 791, 807-08; *Crosby* v. *Pacific S. S. Lines* (C. A. 9), 133 F. 2d 470, 475; *United States* v.

[28] The witness's attribution to petitioner of repeated references to bloodshed (R. 460-62) was plainly prejudicial, and his testimony was relied on by the court below.

Schneiderman (D. C. S. D. Calif.), 106 F. Supp. 731.[29] The procedure approved in these cases was followed in the *Scales* case, as appears from the opinion (Appendix A to petition for cert., p. 44). It has also been followed in the Fifth Circuit. See *Shelton* v. *United States*, 205 F. 2d 806, 814.[30]

The court below treated the motion as though petitioner had asked for the immediate submission of the Brezek report to him, and not for its inspection by the trial judge. Erroneously stating that petitioner relied principally on the decision in *Gordon* v. *United States*, *supra*, the court affirmed the ruling of the trial judge on the ground that petitioner had failed to establish a contradiction between the testimony and the report (App. A, *infra*, p. 47). It did so without mentioning the decisions on trial court inspection of reports, referred to above, which petitioner cited and relied upon in his briefs below.[31]

The decision below requires review because it not only conflicts with the practice in other circuits but presents an important question concerning the minimum safeguard required to protect defendants in criminal cases against perjurious testimony of professional informers.

---

[29] The latter case is now before this Court for review of other questions *sub: nom. Yates* v. *United States*, *supra*. The decision in the *Schneiderman* case was cited with approval by the trial court in the *Mesarosh* case, *supra*. See *United States* v. *Mesarosh*, 116 F. Supp. 345, 350.

[30] Where the trial judge determines after inspection that the report does not contradict the testimony, the defendant may have the report sealed and cerified as a part of the record on appeal. See the *Le Bron*, *Krulewitch*, *De Normand* and *Simonds* cases, *supra*.

[31] The opinion below is also in error in suggesting that petitioner's motion was not made until after the prosecution had closed its case (App. A, *infra*, p. 47). The motion was made at the conclusion of the witness's testimony and before the prosecution rested (R. 468, 472).

IV. The decision below sustaining evidentiary rulings of the trial court is in conflict with the decisions in other circuits and a departure from accepted principles applicable to criminal trials.

A. The Lautner testimony.

Lautner was permitted to state his "expert" opinion as to the meaning of Marxism-Leninism and as to the aims of the Communist Party (R. 203-11). There was no evidence that these opinions were known to or shared by the petitioner, the Communist Party or any of its members.

The admission of this testimony was plainly erroneous. The issues of fact for the jury were whether petitioner had the knowledge and intent charged in the indictment. Lautner's personal opinion about Marxism-Leninism and the Communist Party did not have the faintest relevance to either issue. Moreover, it was incompetent. It is elementary that the acts and declarations of third parties, neither authorized nor ratified by the accused, are inadmissible hearsay. *A fortiori,* opinion testimony must be excluded which, at most, represents the conclusion of the witness from the acts and declarations of unidentified third parties unconnected with the accused.

The court below dismissed our contention with the statement that the Lautner testimony was material (App. A, *infra,* p. 45).

Courts of appeals have held opinion testimony similar to Lautner's admissible in Smith Act conspiracy cases. E.g., *United States* v. *Dennis*, 183 F. 2d 201, 229. We believe this ruling erroneous. In any event, it was based on conspiracy law and is therefore inapplicable. As the *Dennis* decision makes clear (*ibid*), the theory of the courts in these cases was that since a statement by one of the conspirators as to his understanding of Marxism-Leninism would be admissible against his co-conspirators, the conclu-

sion of a witness drawn from such statements is likewise admissible. Since the indictment here does not charge a conspiracy, conspiracy law has no application. *McWhorter* v. *United States*, 281 F. 119, 121; *Sorenson* v. *United States*, 168 F. 785, 792.[32]

Although, as we have seen (*supra*, p. 9), Lautner's testimony refuted the charge against petitioner, it was nevertheless prejudicial. For his statement that the "classical" writings of Communism "documented" his opinion provided the foundation for their admission in evidence (R. 206-08, 225-27). And these writings furnished the sole prop for the verdict as well as for the affirmance below.

B. The Meyer testimony.

As we have seen (*supra*, p. 6), Meyer testified that he had discussed certain of the writings of Marx, Engels, Lenin and Stalin with petitioner, but there was no testimony as to the content of the discussion or concerning petitioner's interpretation of the writings or his understanding of their application to the United States. The most recent of these discussions occurred in "early 1940" (R. 96) and therefore ante-dated the Smith Act which did not become law until June 28, 1940 (18 U. S. C. 2385; Revisor's note).

The Meyer testimony would have been inadmissible, even if relevant to petitioner's knowledge or intent. For it cannot be presumed that a state of mind, innocent at the time it was shown to exist, would continue unchanged after the enactment of a law making it an element of an offense.

---

[32] The court in *Scales* sustained the admission of Lautner's testimony in that case concerning his opinions and unconnected third party acts and declarations on the ground that an indictment under the membership clause charges a conspiracy to which conspiracy rules of evidence apply (Appendix A to petition for cert., p. 42). This theory, even if sound, would require a reversal of petitioner's conviction. For the case was not tried as a conspiracy case, and petitioner was therefore denied an opportunity to avail himself of the benefit of conspiracy instructions.

Wolf v. *United States* (C. A. 8), 259 F. 388; *Haywood* v. *United States* (C. A. 8), 268 F. 795, 806-07; *Langer* v. *United States* (C. A. 8), 76 F. 2d 817, 827. *United States* v. *Dennis* (C. A. 2), supra, at 231-32, and *United States* v. *Mesarosh* (C. A. 3), 223 F. 2d 449, 454 (cert. granted, Dec. 12, 1955) are to the contrary.[33]

Moreover, the Meyer testimony related to a period fourteen or more years prior to the indictment. In the absence of any evidence as to the content of the discussions which occurred in this remote period, the bare fact that petitioner was familiar with certain Marxist books and used them as classroom texts had, at best, only the slightest relevance to his knowledge and intent during the indictment period. Under these circumstances, the decision in *Dennis*, even if correct, is inapplicable, as the court in that case recognized. See *Kammann* v. *United States* (C. A. 7), 259 F. 192 with which the opinion in *Dennis* expressed agreement (at 231-232).

The court below sustained the admission of Meyer's testimony on the authority of the *Dennis* and *Mesarosh* cases and without mention of its decision in *Kamman* (App. A, p. 46, *infra*).

The error in the admission of the Meyer testimony required a reversal. For his testimony served as the sole foundation for the introduction of highly prejudicial excerpts from the "classics" (R. 96-108, 228-31) which formed the heart of the prosecution's case.

C. The "classical" literature.

If, as we have urged, the Lautner and Meyer testimony was inadmissible, it follows of course that the excerpts which they identified should likewise have been excluded.

---

[33] But cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 705-6, indicating approval of the rule adhered to in the Eighth Circuit.

They should have been excluded for the additional reason that there was no evidence that the petitioner (or, for that matter, the Communist Party or any of its members) understood or taught that the "classical" literature advocated the violent overthrow of the government of the United States.

The court below held that the excerpts were admissible nevertheless, stating that they were probative of the current program and teachings of the Communist Party and the knowledge and intent of petitioner (App. A, *infra*, p. 46). By this logic, Jefferson's recommendation that the tree of liberty be refreshed by the blood of patriots and tyrants [34] would be "probative" of a charge that the Democratic Party, to the knowledge of its members, currently advocates violent overthrow.

The Court has undertaken to review related evidentiary questions which arose in the *Mesarosh* and *Yates* cases, *supra*. Related questions are likewise presented by the petition for certiorari in the *Scales* case. Since the issues presented here will recur in all future prosecutions under the membership clause, review of the rulings below is required.

V. The affirmance below of the trial court's instruction that the teaching and advocacy alleged in the indictment has reference to the teaching and advocacy of the Communist Party as an entity and not to that of the members individually presents a novel and important question of statutory construction which should be decided by this Court.

Both paragraphs of the indictment (R. 3-4), in conformity with the membership clause, refer to the Commu-

[34] In a letter to William Smith hailing Shays' Rebellion. The court below seems to believe that we cited this statement as a justification for the advocacy of violence (App. A, *infra*, p. 45).

nist Party as "a society, group and assembly of *persons who* teach and advocate" the proscribed doctrine. Strictly construed, as they must be, the statute and the indictment plainly do not refer to the advocacy of the organization as an entity but to that of the "persons who" are its members. Obviously, if only the leaders or a small fraction of the members engaged in the proscribed advocacy, without authorization or ratification by the other members, the organization could not be a "society of persons" who so advocate. It follows that the indictment required proof that, to petitioner's knowledge, a majority, or at least a substantial proportion, of the members advocated illicit doctrine either personally or vicariously.

Petitioner's request for an instruction to this effect was denied (R. 616-18). Instead, the trial court instructed the jury (R. 520-21, 577) that the teaching and advocacy alleged in the indictment refers to the teaching and advocacy of the organization and not to that of its members individually. The court below affirmed without discussion.

The ruling below was erroneous. Had Congress intended the test of guilt to be knowledge of the alleged advocacy of the organization as an entity, it could have said so in clear and unequivocal terms. Indeed, it has said so clearly and unequivocally in the Immigration and Nationality Act and the Labor Management Relations Act, both of which deal with the advocacy of violence by organizations as such; 8 U. S. C. 1182(a)(28)(F), 1251(a)(6)(F), 1424(a)(4); 29 U. S. C. 159(h).

Nor can it be argued that the distinction between the two formulations is without a difference. An unincorporated association is an entity distinct from its membership. Acts or advocacy of the former cannot be imputed to the latter in the absence of authorization or ratification. *United States* v. *White*, 322 U. S. 694, 703; *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295; *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S.

344; *Schneiderman* v. *United States, supra*, at 136; *Knauer* v. *United States, supra*, at 669.

Had the trial court granted petitioner's requested instruction, there could not have been a conviction. For the prosecution tried the case on the theory of the instruction which was given and offered no evidence that, to the knowledge of the petitioner or otherwise, individual members of the Communist Party engaged in, authorized or ratified the proscribed advocacy.

The question of statutory construction presented by the decision below will arise in all prosecutions under the membership clause. Accordingly, it should be settled by the Court.

VI. The decision below that Section 4(f) of the Internal Security Act does not bar prosecution of the offense charged in the indictment presents an important question of Federal law which should be decided by this Court.

Section 4(f) of the Internal Security Act (50 U. S. C. 783(f)) provides that, "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or *of any other criminal statute.*" (Emphasis supplied.)

The gravamen of the indictment is that membership in a Communist organization (the Communist Party) with knowledge of the alleged illicit advocacy of its members constitutes a violation of the membership clause of the Smith Act. The court below, quoting from the opinion in *Scales*, held (App. A, *infra*, p. 52) that the crime charged in the indictment is not within the immunity conferred by section 4(f) because membership "per se" does not embrace membership in the Communist Party when accompanied by knowledge that it advocates proscribed doctrine.

This restrictive construction of section 4(f) makes the reference to "any other criminal statute" meaningless and disregards the legislative history of the section and of the Communist Control Act.

It is obvious that Congress must have believed that membership "per se" constituted a violation of some criminal statute other than the Internal Security Act. Otherwise the reference to "any other criminal statute" would have been pointless. But the only other criminal statute which might have been applicable to members of the Communist Party by virtue of their membership was the membership clause of the Smith Act which makes guilty knowledge an element of the offense. Hence, Congress must have intended membership "per se" to embrace membership with guilty knowledge, but to exclude membership when not accompanied by any other *overt act*.

The legislative history confirms this reading of 4(f). It reveals that the purpose of the section was to insure the enforceability of the registration requirements of the Internal Security Act by making the privilege against self-incrimination unavailable to officers and members of Communist organizations as a defense against prosecutions for failure to register. (See e.g., letter of John W. Davis, Esq., Sen. Rep. No. 1365, 81st Cong., 2d Sess., pp. 43-44.)[35] Section 4(f), as reported out by the Senate and House Committees, limited the grant of immunity to prosecutions under sections 4(a) and 4(c) and omitted the reference to "any other criminal statute" which appears in the final enactment. (Sen. Rep. No. 1365, 81st Cong., 2d Sess., p. 2; 96 C. R. 13752.) The latter clause was added as an amendment on the floor of the House only after warnings had been sounded in both the Senate and the House that the section in its original form was inadequate because it did not confer immunity from prosecutions under the membership

[35] We are not here concerned with the question whether the immunity conferred by 4(f) is broad enough to accomplish this purpose but only with the question of Congressional intent.

clause of the Smith Act. (Sen. Rep. No. 2369, Part 2, 81st Cong., 2d Sess., pp. 12-13; 96 C. R. 14479, 15198, 13739, 13761.)

The legislative history of the Communist Control Act confirms the fact that Congress intended section 4(f) to immunize Communists from prosecution under the membership clause of the Smith Act and believed that the section accomplished that result. The Communist Control Act had its origin in S. 3706. Senator Humphrey offered an amendment, prefaced by a finding that the purpose of the Communist Party is to overthrow the government by violence, which would have made it a crime to be a member of the Communist Party with knowledge of its purpose (100 C. R. 13557).[36] Accordingly, the crime defined in the Humphrey amendment was substantially identical with the crime charged in the indictment.

The Attorney General and the Congressional leadership opposed the Humphrey amendment. They urged that its adoption would make the registration provisions of the Internal Security Act unenforceable by partially repealing section 4(f) and permitting the successful assertion of the constitutional privilege as a defense against prosecutions for failure to register. (See e.g., 100 C. R. 14041, 13836, 13956.) Acting upon these representations, Congress eliminated all criminal penalties for membership in the Communist Party from the act which it finally adopted. (See sections 3 and 4 of the Communist Control Act.) Thus, the Congressional debate and its resolution were based on the belief that, by virtue of section 4(f), membership in the Communist Party with knowledge of its alleged illicit purpose is not a crime under existing law and should not be made a crime. If that belief is sound, and we have shown

[36] All references to 100 C. R. are to the daily pagination. That guilty knowledge was an element of the crime which the Humphrey amendment proposed to create is not only apparent from the face of the amendment but was emphasized by the Senator in explaining its provisions during the debate. 100 C. R. 13581.

that it is, section 4(f) barred the offense charged in the indictment.[37]

The question of the effect of section 4(f) upon the prosecution of Communists under the membership clause of the Smith Act is important and novel and plainly should be settled by the Court.[38]

VII. The decision below that the findings of the Communist Control Act did not deprive petitioner of the right to a fair and impartial trial presents an important constitutional question which should be decided by this Court.

Congress found in sections 2, 3 and 4 of the Communist Control Act that the Communist Party advocates the violent overthrow of the government and therefore declared it to be an outlaw organization, stripped of all rights, privileges and immunities. One element of the offense charged in the indictment as construed by the trial court (see *supra*, p. 30) is that the Communist Party advocates violent overthrow. Petitioner was entitled to a fair and impartial jury trial of this, as of every other, issue of fact. *Manley* v. *Georgia*, 279 U. S. 1; *Frank* v. *Mangum*, 237 U. S. 309;

---

[37] The court below (App. A, *infra*, p. 53), relied on Section 17 of the Internal Security Act (50 U. S. C. 796) providing that the act "shall be construed as being in addition to and not in modification of existing criminal statutes". However, the legislative history of Section 4(f) and familiar principles of statutory construction establish that this general savings clause was not intended to and does not override the specific reference to "any other criminal statute". *United States* v. *Yuginovich*, 256 U. S. 450, 463; *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 207; *United States* v. *Ginn*, 222 F. 2d 289, 290-91.

[38] It is premature, in this petition, to consider the effect of a possible decision in *Communist Party of the United States* v. *Subversive Activities Control Board*, No. 48, this term, that the registration provisions of the Internal Security Act are unconstitutional or that the Communist Party is not a Communist organization as defined in that act.

Mooney v. *Holohan*, 294 U. S. 103; *Moore* v. *Dempsey*, 261 U. S. 86.

The Congressional finding made such a trial impossible. It would be naive to suppose, in the face of the finding, that a jury would even consider the question *de novo*, much less render a contrary verdict.

The court below held (App. A, *infra*, p. 52) that any prejudgment on the part of the jurors could have been discovered on *voir dire* and cured by appropriate instructions. Neither course could have overcome the prejudicial effect of the legislation, but would simply have directed the attention of the jurors to it. Cf. *Delaney* v. *United States*, 199 F. 2d 107, 112.

Congress cannot have its cake and eat it. It cannot declare a named organization to be engaged in criminal conduct and simultaneously preserve the right to a fair trial of the very issue which it has predetermined by fiat.[39] The decision below that Congress can do so presents a constitutional question which should be settled by the Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

[39] In fact, Congress did not intend to have it both ways. For as we have shown (*supra*, p. 33), it believed when it passed the Communist Control Act that the prosecution of Communists under the membership section of the Smith Act was barred by Section 4(f) of the Internal Security Act.

APPENDIX A

Opinion Below

January 12, 1956

Before DUFFY, *Chief Judge*, and LINDLEY and SWAIM, *Circuit Judges.*

DUFFY, *Chief Judge.* Defendant was convicted after a jury trial on a one count indictment which charged violation of the "membership" clause of Section 2 of the Smith Act. 54 Stat. 671, 18 U. S. C. § 2385.[1] The indictment was returned on May 14, 1954 and charged: 1) That, continuously since July 26, 1945, the Communist Party of the United States has been a "society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit." and 2) That, continuously since July 26, 1945, the defendant has been a member of the Communist Party of the United States of America well knowing during all of said period that said Communist Party "was and is a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit."

---

1 "* * *

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government (in the United States) by force or violence; or *becomes or is a member of*, or *affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof*—

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, * * *."

(The so-called membership clause is the portion italicized.)

Defendant moved to dismiss the indictment on the following grounds: 1) Section 2 of the Smith Act and the indictment violate the First and Fifth Amendments; 2) The indictment is barred by Section 4(f) of the Internal Security Act of 1950;[2] and 3) Section 2 of the Smith Act, as supplemented by sections 2, 3 and 4 of the Communist Control Act of 1954,[3] deny the defendant due process by depriving him of the right to a fair and impartial trial. The trial court denied the motion to dismiss.

At the trial, defendant's counsel stipulated that defendant had been a member and an official of the Communist Party during the period covered by the indictment. However, defendant was not a mine-run member of the Communist Party, nor was he an innocent worker, unhappy with his lot, who joined up with the Party in the expectation that it would eventually better his economic position. The evidence disclosed that Lightfoot was an intelligent, dedicated, crusading Communist, who rose to a position of great influence in his Party, not only in the midwest, but also on the national level.

The proof was that Lightfoot had been a member of the Communist Party since at least 1934. He was early a Section Organizer for the Young Communist League as well as a member of the District Bureau of that League. In 1936 he was a delegate to the Sixth Congress of the Young Communist International which is affiliated with the World Communist Party. Later, he was a Section Organizer for the Communist Party and was a member of

---

[2] Section 4(f) of the Internal Security Act of 1950, Title 50, § 781 *et seq.*, provides: "Neither the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. * * *"

[3] Sections 2, 3, and 4 of the Communist Control Act of 1954, 68 Stat. 775-776, 50 U. S. C. 841, 842, 843, find as a fact that the object or purpose of the Communist Party of the United States is to overthrow the government of the United States by force and violence.

the District Committee of the Illinois-Indiana District of the Party.

Lightfoot spent considerable of his time in teaching the various doctrines, aims and program of the Communist Party. He taught in Workers Schools as well as a considerable number of inner-party classes. He taught in District Training Schools which were secret schools for hardening and training leadership in Communist activities. These schools were taught only by leading party functionaries. In 1938 and thereafter, he taught under the supervision of the Director of the Chicago Workers Schools and the Educational Director of the Illinois-Indiana District of the Communist Party. He taught such subjects as Marxism-Leninism; History of the Communist Party of the Soviet Union; and other courses relating to the theory and practices of Communism. To teach some of these courses he had to be theoretically skilled in and have detailed information about Communist doctrine.

Lightfoot was early recognized as one of the top Communist leaders of the Illinois-Indiana District, and he functioned for many years as a full-time employee and representative of the Party. He was a paid employee of the Party as early as 1937. He made many speeches upon behalf of the Communist Party, at times speaking in praise of the success of the Russian Revolution under the leadership of Lenin and Stalin. At a party meeting in the Ashland Auditorium in Chicago in 1947, Lightfoot spoke of his experiences before the Illinois Legislative Committee which was investigating subversive activities, and he promised protective secrecy for the party records. At this assembly, he advised the membership on the use of the underground.

At the 1948 State Convention of the Party, Lightfoot was appointed as a regional director of a new party set-up to bring about Communist infiltration in the fourteen basic or vital community industries. On November 10, 1950

Lightfoot delivered the principal address at a Communist meeting to celebrate the 33rd anniversary of the Russian Revolution. On various business and public records defendant listed himself as Executive Director of the Communist Party of Illinois, and the Secretary of the Illinois State Committee of the Communist Party. Up to the time of the indictment he handled Communist Party funds for the Illinois group. In 1950 he was elevated to the position of Member of the National Committee of the Communist Party of the United States, a position which he held up to the time of the indictment.

Defendant moved for a directed verdict and for a judgment of acquittal which motions were denied. Later, he made motions in arrest of judgment and for a new trial which were likewise denied. Defendant urges the verdict and judgment of guilty are not supported by the evidence. Defendant says there was no direct evidence that he had knowledge of any teaching or advocacy of proscribed doctrine by the Communist Party or that he intended to bring about the violent overthrow of the Government of the United States. Defendant insists the Government's case rested entirely upon a series of inferences.

The Government offered evidence both documentary and by expert witnesses which, if believed, proved that for a number of years prior to 1944, and from and after July 26, 1945, the Communist Party of the United States was a political organization dedicated to the principles of Marxism-Leninism, and its aim was the destruction of the existing social order (which it called "Imperialism") as well as the destruction of "Imperialistic Government" including the United States of America. The Party taught that to reach the goal of the "Proletarian Revolution and the Dictatorship of the Proletariat", actual class revolt would be necessary, and violence and bloodshed inevitably would result.

The proof disclosed that the program of the Communist Party in the United States called for the development of

a close, well-disciplined organization with a highly trained staff of professional revolutionaries. The ultimate goal and objective of the Party was unchangeable, but the day-to-day program of activities might change as conditions and circumstances would require. As an illustration, when the United States went to war with Fascist Germany, Hitler was regarded in many parts of the world as the great anti-communist symbol. The revolutionary purposes of the Communist Party in the United States were temporarily abandoned, and a Communist Political Association was organized to take its place. One of the ostensible objectives of the Association was to work for socialism through processes of peaceful change. However, as soon as Hitler was eliminated in 1945, the Political Association was abandoned, and the Communist Party in the United States was reconstituted along the lines of Marxism-Leninism, as an instrument of class war and the dictatorship of the proletariat. The Party went forward with the program which had been temporarily abandoned, and this program continued during the years covered by the indictment.

Upon evidence very similar to and in many respects identical with that received in the case at bar, the Court of Appeals of the Second Circuit, in *United States* v. *Dennis, et al.*, 183 F. 2d 201, summarized some of the proof as to the organization, aims and activities of the Communist Party in this country, which summary was quoted by the United States Supreme Court in the *Dennis* case on appeal, 341 U. S. 494, 498, as follows:

> "• • • But the Court of Appeals held that the record supports the following broad conclusions: • • • that the Communist Party is a highly disciplined organization, adept at infiltration into strategic positions, use of aliases, and double-meaning language; that the Party is rigidly controlled; that Communists, unlike other political parties, tolerate no dissension from the policy laid down by the guiding forces, but that the approved program is slavishly followed by the members of the Party; that the literature of the

Party and the statements and activities of its leaders, petitioners here, advocate, and the general goal of the Party was, during the period in question, to achieve a successful overthrow of the existing order by force and violence.".

We hold that substantial evidence supports the charge contained in the first paragraph of the indictment, and that the jury was fully justified in finding beyond a reasonable doubt that the Communist Party in the United States has, from and after July 26, 1945, been a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit. A number of courts have held that evidence substantially the same to that appearing in the record before us, warranted a similar finding.[4] It might be noted that in the majority opinion in *Schneiderman* v. *United States*, 320 U. S. 118, heavily relied upon and frequently cited by defendant, the Court said (p. 153), "We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here. * * *."

We next consider whether there was substantial proof in the record that the defendant was a member of the Communist Party well knowing that it taught and advocated the doctrine of overthrowing and destroying the government of the United States by force and violence, and that said defendant intended to bring about such overthrow by force and violence as speedily as circumstances would permit.

The evidence showed that for many years prior to the indictment Lightfoot was completely familiar with the ob-

---

[4] *Dennis* v. *United States*, 2 Cir., 183 F. 2d 201, affirmed 341 U. S. 494; *Frankfeld et al.* v. *United States*, 4 Cir., 198 F. 2d 679; *United States of America* v. *Mesarosh*, 3 Cir., 223 F. 2d 449; *Scales* v. *United States*, 4 Cir., ... F. 2d ..... (decided November 7, 1955).

jectives of the Communist Party in the United States, and with the literature of the Party which advocated such objectives. Defendant was intimately acquainted with the "classical" writings of Marx, Engels, Lenin and Stalin which advocated the violent overthrow of capitalistic governments as speedily as circumstances would permit. In fact, defendant contributed articles to Party publications which stressed the importance of such "classics" in the Communist program. Perhaps his knowledge is best shown by the fact that Lightfoot was a teacher in the District Training Schools which were the secret schools for training Communist leaders. The teachers in these schools were leading Party functionaries. At no time did Lightfoot disavow the teachings of Communist leaders or writers.

There was direct testimony from the former educational director of the Illinois-Indiana District of the Communist Party that under his direction and supervision Lightfoot taught, among other subjects, Marxism-Leninism, and the History of the Communist Party of the Soviet Union. From the exhibits offered by the Government it appears that Russia, where the existing social order was overthrown by a violent revolution, was held up as an example of what could be accomplished by the Communists in this country.

We hold that the evidence proved that defendant had knowledge that the Communist Party of the United States advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

Defendant insists that there is nothing in the record to show that he personally had the specific intent to bring about the overthrow of the government of the United States by force and violence, and he quotes from *Schneiderman* v. *United States*, 320 U. S. 118, 136, that membership in an organization with knowledge of its purposes is not evidence of the member's intent to effectuate such purposes.

We think the evidence was sufficient to prove not only defendant's knowledge that the aim and program of the Communist Party of the United States was the overthrow of our Government by force and violence as speedily as circumstances would permit, but that defendant likewise had such intent. Defendant was well acquainted with the Party doctrine of "Democratic Centralism" which required all members of the Party to accept, without question, the teachings of the Communist leadership under penalty of severe disciplinary action or expulsion.

"* * * the state of a man's mind must be inferred from the things he says and does." *American Communications Assn. C.I.O., et al.* v. *Douds*, 339 U. S. 382, 411. The law assumes every man to intend the natural consequences which one standing in his circumstances and possessing his knowledge would reasonably expect to result from his acts. *Cramer* v. *United States*, 325 U. S. 1, 31. "Actions of the accused are set in time and place in many relationships. Environment illuminates the meaning of acts, as context does that of words. What a man is up to may be clear from considering his bare acts by themselves; often it is made clear when we know the reciprocity and sequence of his acts with those of others, the interchange between him and another, the give and take of the situation." *Cramer* v. *United States*, 325 U. S. 1, 32-33.

Lightfoot's years of devotion to the Communist Party in the United States, and his zeal in obtaining recruits for those doctrines which the Party advocated, and his energy in carrying out the objectives and program of the Party, all were matters properly considered by the jury upon the question of intent. *United States of America* v. *Flynn, et al.*, 2 Cir., 216 F. 2d 354, 360. Furthermore, there was direct evidence that at Lake Ivanhoe School conducted by the Party, while instructing a class on the procedures for the revolution of the proletariat the defendant stated: "If we have to spill blood, we will."

Although defendant's counsel argues there is no proof of defendant's advocacy or of his belief in the program of the Communist Party to overthrow the Government of the United States by force and violence in what may be an effort of justification in case it was found the defendant did so advocate, he quotes the following statement from Thomas Jefferson: "The tree of liberty must be refreshed from time to time, with the blood of patriots and tyrants. It is its natural manure." [5]

We are satisfied the evidence was ample both to require that the case be submitted to the jury and to sustain the verdict rendered.

Three of defendant's claims of error are: the testimony of the witness Lautner should have been excluded as hearsay; that testimony of the witness Meyer should have been excluded as remote and irrelevant; the excerpts of the "classics" should have been excluded as prejudicial and irrelevant.

John Lautner joined the Communist Party in 1929, and except during his period of army service, was a Communist Party organizer, teacher and leader until January 17, 1950. He has testified in a number of prosecutions under the Smith Act as an expert witness as to the teachings and program of the Communist Party of the United States. It seems clear that he was qualified as an expert witness on the subject about which he testified. In any event, whether the witness was qualified as an expert was a matter confined to the discretion of the trial judge. *Cohen v. Travelers Ins. Co.*, 7 Cir., 134 F. 2d 378, 384. No abuse of discretion has been shown. Furthermore, the matters about which he testified were material to the issues of the case at bar. We hold there was no error in receiving Lautner's testimony.

---

[5] Taken from a private letter to William Smith written in 1787 prior to the adoption of the Constitution of the United States which in Article V made provision for amendment, whereby our form of government could be changed in a peaceful manner.

Frank S. Meyer testified that from 1934 to 1942 he had been closely associated with the defendant in the Illinois Communist Party. He testified relative to a conversation with defendant in 1940 with reference to the latter's teaching the History of the Communist Party of the Soviet Union. Although this occurred some years before the period covered by the indictment, it was admissible to show defendant's knowledge and intent. *United States* v. *Dennis*, 183 F. 2d 201, 231-232; *United States* v. *Mesarosh*, 223 F. 2d 449, 454. As stated by Judge Learned Hand in the *Dennis* case (page 231) "How far back of the commission of the crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence. In the case at bar, there is not the least reason to hold that his discretion was abused. * * *." We hold there was no error in receiving Meyer's testimony.

Defendant also contends that it was error to admit into evidence excerpts from the Marxism-Leninism "Classics." These so-called "Classics" stress the importance of Marxism-Leninism "as a guide to action" and treat openly the subject of force and violence in the Proletarian Revolution and the establishment of the Dictatorship of the Proletariat. We think these excerpts were admissible not only as probative of the teachings and program of the Communist Party material under paragraph 1 of the indictment, but many of them were directly connected with the defendant in his capacity as teacher in the Party Schools, and were properly admitted as bearing upon his knowledge and intent.

Defendant claims the trial court erred in refusing to order the production of a report made to the FBI by the witness Brzek who was a member of the Communist Party from 1943 to 1947. In the latter year Brzek attended classes taught by defendant Lightfoot at a Communist School conducted in Ivanhoe, Wisconsin. It was at one of these classes Brzek testified that defendant stated: "If we have to shed blood, we will." On cross-examination

Brzek testified he had made a report with reference to said classes to the Milwaukee office of the FBI. The report thus made was not in the courtroom, nor did the witness use a copy thereof to refresh his memory. The motion to produce was made after the Government had closed its case. Defendant offered no oral testimony. On his claim of error, defendant relies principally upon *Gordon et al.* v. *United States*, 344 U. S. 414.

In *Gordon* the Court said, pages 418-19: "By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried: * * *"

In the case at bar nothing was developed on cross-examination to the effect that the report to the FBI conflicted with the direct testimony of Brzek. Thus an essential element of the rule stated in *Gordon* was not here present. No proper foundation was laid for the production of the report, and the trial court was correct in denying the motion to produce. *The United States of America* v. *Echeles*, 7 Cir., 222 F. 2d 144, 152-153; *Starr* v. *Commissioner of Internal Revenue*, 7 Cir., 226 F. 2d 721, 724; *Jencks* v. *United States of America*, 5 Cir., 226 F. 2d 540, 553; *Jencks* v. *United States of America*, 5 Cir., 226 F. 2d 553, 560-561.

Furthermore, we think that the District Court, under the rule stated in *Goldman* v. *United States*, 316 U. S. 129, 132, properly denied the defendant's motions. The Court, in that case, used this language:

> "We think it is the better rule that where a witness does not use his notes or memoranda in court, a party has no absolute right to have them produced and to inspect them. Where, as here, they are not only the

witness' notes but are also a part of the Government's files, a large discretion must be allowed the trial judge. We are unwilling to hold that the discretion was abused in this case."

To the same effect: *Ira Ikuko Toguri D'Aquino* v. *United States*, 9 Cir., 192 F. 2d 338, 375; *Imperatore* v. *United States*, 2 Cir., 193 F. 2d 409, 410; *Neal* v. *United States*, 5 Cir., 203 F. 2d 111, 118; *United States* v. *Mesarosh, et al.*, D. C., W. D. Pa., 116 F. Supp. 345, 349, 350.

A more difficult question is presented by defendant's claim that the membership clause of the Smith Act is unconstitutional on its face and as applied by the trial court. Defendant insists this clause imputes guilt solely by reason of association.

There is no doubt that an individual, or indeed, a group of individuals, may advocate and teach the desirability of a change in our form of government no matter how unpopular, radical or revolutionary the proposal may be, provided such changes are to be accomplished by processes which the Constitution provides. Had the defendant confined his advocacy and teaching for a change in our form of government within the limits of constitutional processes, he would clearly have been protected by the First Amendment.

Defendant's counsel makes frequent reference to the opinion of the Court in *Schneiderman* v. *United States*, 320 U. S. 118, to demonstrate that guilt is personal, and that members of a party or organization need not necessarily agree with the pronouncements of their leaders. Overlooked or ignored in such argument is the proof in the case at bar showing the rigid discipline imposed on Communist Party members during the period covered by the indictment. The corner-stone Party doctrine of "Democratic Centralism" left no room in the Party for members who might not agree with the program of the overthrow of our Government by force and violence.

Party members were bound to accept without question the teachings of the Communist leadership. The defendant was one of the most zealous of those teachers.

The United States Supreme Court has consistently recognized the inherent value of free discourse. However, it is settled that the right to free speech is not an unlimited, unqualified right but, as the Court said in *Dennis*, p. 503: "• • • the societal value of speech must, on occasion, be subordinated to other values and considerations."

Defendant admits that in *Dennis* the Supreme Court sustained the provisions of the Smith Act making it a crime for any person to wilfully and knowingly advocate the overthrow of the Government of the United States by force and violence; to organize or help organize any group which does so; or to conspire to do so.[5] The Court specifically held that a clear and present danger existed. However, defendant argues that the *Dennis* case marks the outermost limit of the Court's sanction of an abridgement of rights within the area guarded by the First Amendment. Defendant points out that the membership clause of the Smith Act was not an issue in *Dennis*, and insists that in the period covered by the indictment, no clear or present danger existed.

It was in *Schenck* v. *United States*, 249 U. S. 47, 52, that Justice Holmes announced the doctrine that: "• • • The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to

[5] The Court did not limit its holding of constitutionality to the organizing clause of this subsection, but held, at page 516:

"We hold that §§ 2(a)(1), 2(a)(3) and 3 of the Smith Act do not inherently or as construed or applied in this instant case violate the First Amendment and other provisions of the Bill of Rights, or the First and Fifth Amendments because of indefiniteness."

prevent." The latest word from the Supreme Court on the subject of clear and present danger appears in the *Dennis* case.

We have before us an example of the ever-recurring problem presented to courts of striking a balance between freedom for the individual and the security for our country and government. "Self-preservation is a high prerogative of any sovereignty." *Communist Party of the United States* v. *Subversive Act Control Board*, 223 F. 2d 531, 543. "There is no constitutional right to 'gang up' on the government." Justice Jackson in *Dennis* v. *United States*, 341 U. S. 494, 577. In *Dennis* the Court said, p. 501: "No one could conceive that it is not within the power of Congress to prohibit acts intended to overthrow the Government by force and violence." And again, at p. 509: "Overthrow of the Government by force and violence is certainly a substantial enough interest for the Government to limit speech. Indeed, this is the ultimate value of any society, for if a society cannot protect its very structure from armed internal attack, it must follow that no subordinate value can be protected."

In explaining the phrase "clear and present danger" the Court, in *Dennis*, said at p. 509: "Obviously, the words cannot mean that before the Government may act, it must wait until the *putsch* is about to be executed, the plans have been laid and the signal is awaited. If Government is aware that a group aiming at its overthrow is attempting to indoctrinate its members and to commit them to a course whereby they will strike when the leaders feel the circumstances permit, action by the Government is required. The argument that there is no need for Government to concern itself, for Government is strong, it possesses ample powers to put down a rebellion, it may defeat the revolution with ease needs no answer. For that is not the question. Certainly an attempt to overthrow the Government by force, even though doomed from the outset because of inadequate numbers or power of the revolution

ists, is a sufficient evil for Congress to prevent. The damage which such attempts create both physically and politically to a nation makes it impossible to measure the validity in terms of the probability of success, or the immediacy of a successful attempt."

In *United States* v. *Flynn*, 2 Cir., 216 F. 2d 354, 367, the Court held that the danger found in the *Dennis* case had not abated by the summer of 1951, the date of the *Flynn* indictment. But defendant argues that at the date of the indictment of the case at bar no shooting war was in progress and, therefore, conditions had changed. Furthermore, at the time of the oral argument before this Court, defendant's counsel seemed to be deeply impressed by the Spirit of Geneva, and he professed to believe that the Geneva Conference had resulted in a complete relaxation of International tensions. The period covered by the indictment is, of course, the critical period for us to consider. However, in any case, whether a clear and present danger existed cannot depend on whether the faces of the Communist Leaders in Russia are suffused with smiles. We need only make passing mention of the fact that at the time of the writing of this opinion, the smiles have been replaced with scowls, and the sugary words of such leaders have been supplanted by words of vituperative condemnation.

Only one other Court of Appeal has passed upon the claim that the membership clause of the Smith Act is unconstitutional. In *Scales* v. *United States*, ... F. 2d ..... (decided November 7, 1955) the Fourth Circuit held the membership clause of the Smith Act to be constitutional. *See also Frankfeld et al.* v. *United States*, 4 Cir., 198 F. 2d 679, 683, 684. We agree with the decision in *Scales*, and hold the membership clause of the Smith Act to be constitutional.

Defendant urges he was deprived of a trial by a fair and impartial jury as a result of the enactment of the

Communist Control Act of 1954, wherein Congress declared that the Communist Party advocates the overthrow of the Government of the United States by force and violence. Defendant does not contend that any prejudice on the part of any of the jurors in this case appears from the record. Rather, he urges it must be implied that a jury presumed to know the law will not ignore the statutory findings.

In effect, it is defendant's position that all persons subject to prosecution under the Smith Act are immunized from prosecution indefinitely, or at least as long as the Communist Control Act remains a part of the laws of this nation. We do not agree. If any jury had any such prejudgment, the instructions of the Court cured their error. Furthermore, whether any such belief existed in the mind of any juror, might have been discovered on the *voir dire* examination.

Defendant further contends prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act, 50 U. S. C. 783(f), which provides that:

> "Neither the holding of office nor membership in any Communist organization by any person shall consitute *per se* a violation of subsection (a) or subsection (c) of this section of any other criminal statute."

Defendant argues that the purpose and intent of the section was specifically to bar prosecution of Communists under the membership clause of the Smith Act.

A similar argument was overruled in the *Scales* case. We quote with approval the following from that opinion:

> "The purpose of this provision, as defendant correctly argues, was to insure the enforceability of the registration provisions of the act by making the privilege against self-incrimination unavailable as a defense to failure to register. The language of the sec-

tion relied on, however, provides merely that neither holding of office nor membership in a Communist organization shall constitute *per se* a violation of a criminal statute. It does not purport to exempt from criminal liability membership in an organization advocating the overthrow of the government by force and violence where such membership is acquired or held with knowledge of the criminal purpose in which the organization is engaged. In other words, mere membership in the party is not a crime. Membership with knowledge of the criminal purpose of the organization remains a crime.

* * * * *

"* * * Even though the Communist Party has such purpose, membership *per se* is not made a crime under the Smith Act; and it is only membership *per se*, which is exmpted from criminal prosecution under section 4(f) of the Internal Security Act. That no modification of the provisions of the Smith Act was intended by Congress in the passage of the Internal Security Act of 1950 is made abundantly clear by section 17 of the Internal Security Act, 64 Stat. 1003, 50 U. S. C. 795, which provides:

> 'The foregoing provisions of this title shall be in addition to and not in modification of existing criminal statutes.'

In view of this interpretation which Congress itself placed on the statute at the time of its passage, there is no occasion for further discussion as to its effect upon the Smith Act. The charge of the court heretofore quoted, made it clear that defendant could not be convicted because of mere membership in the party."

Defendant claims error was committed in other comparatively minor matters. Suffice to say, we have considered his arguments in respect thereto and find them to be without merit.

The judgment of conviction is

AFFIRMED.

APPENDIX B

Statutes Involved

1. The Smith Act, 18 U. S. C. 2385.

Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof——

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

2. Section 4(f) of the Internal Security Act, 50 U. S. C. 783 (f).

(f) Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 787 or section 788 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

3. Sections 2, 3 and 4 of the Communist Control Act, 50 U. S. C. 841-43.

FINDINGS OF FACT

Sec. 2. The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchical chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members.

The Communist Party is relatively small numerically, and gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.

PROSCRIBED ORGANIZATIONS

SEC. 3. The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are hereby terminated: *Provided, however*, That nothing in this section shall be construed as amending the Internal Security Act of 1950, as amended.

SEC. 4. Whoever knowingly and willfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, with knowledge of the purpose or objective of such organization shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended, as a member of a "Communist-action" organization.

(b) For the purposes of this section, the term "Communist Party" means the organization now known as the Communist Party of the United States of America, the Communist Party of any State or subdivision thereof, and any unit or subdivision of any such organization, whether or not any change is hereafter made in the name thereof.

Office - Supreme Court, U. S.
FILED
MAR 7 1956
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 304

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

REPLY TO BRIEF FOR THE UNITED STATES

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 661

CLAUDE MACK LIGHTFOOT, Petitioner,

v.

THE UNITED STATES OF AMERICA, Respondent.

REPLY TO BRIEF FOR THE UNITED STATES

This reply is confined to the question presented by the denial of petitioner's motion that the trial judge inspect the report made to the F.B.I. by the prosecution witness Brzek to determine whether it contradicted his testimony and should therefore be made available to the defense (Pet. for Cert., pp. 24-25).

The Solicitor General argues (Br., pp. 21-22) that petitioner's motion was untimely, apparently because it was not made until the witness stepped down from the stand. This point was not made at the trial or in the Court of Appeals. It is urged here for the first time and is without merit.

It is not and could not be asserted that the prosecution was prejudiced in any way by the fact that petitioner did not make his motion before the witness was excused. The government seems to suggest, however, that this fact would have foreclosed petitioner from utilizing the report had the trial judge found it impeaching and made it available to the defense. The suggestion is groundless. Petitioner could have recalled the witness for further cross-examination on the basis of the report. *Belanger* v. *Alton Box*

Board Co. (C. A. 7), 180 F. 2d 87, 94; *Ching* v. *United States* (C. A. 9), 264 F. 639, 642, cert. den., 254 U. S. 630.[1] In the alternative, petitioner could have offered the report in evidence as part of his affirmative case. It is clear, therefore, that petitioner's motion was timely.

The government's only reply on the merits of the motion is to cite *Gordon* v. *United States*, 344 U. S. 414, and *Goldman* v. *United States*, 316 U. S. 129 (Br., p. 21). Its reliance on these decisions is misplaced since neither involved a motion for trial court inspection of the contemporaneous written statement of a witness concerning the subject matter of his testimony. The government studiously ignores the series of cases in the Second, Fourth, Fifth, Eighth and Ninth Circuits (Pet. for Cert., pp. 24-25) in which motions identical with petitioner's were granted.[2] The conflict between these cases and the decision below is irreconcilable. The issue is of general importance to the administration of justice and should be settled by the Court.

Respectfully submitted,

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

---

[1] Earlier in the trial, the judge reserved decision on a motion for the production of the F.B.I. reports of another witness with the understanding that the witness would be subject to recall if the reports were thereafter made available to the defense (R. 424-26).

[2] *Jencks* v. *United States* (C. A. 5), 226 F. 2d 540 (petit. for cert. filed, Dec. 23, 1955, No. 596), contrary to the cases cited in our petition and in accord with the decision below, placed a motion for trial court inspection of F.B.I. reports on the same footing as a motion for their immediate production to the defendant and denied the motion on the authority of the *Gordon* and *Goldman* cases. But cf. *Fisher* v. *United States* (C. A. 9), decided Feb. 15, 1956 (not yet reported), holding that the defense was entitled to the production to it of receipts of an informer witness for monies received from the F.B.I. without a showing that the receipts contradicted the testimony of the witness and notwithstanding that, at most, they would impeach him on a collateral issue.

SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 2 8 1956
JOHN T. FEY, Clerk

Supreme Court of the United States

October Term, 1956

No. 4

CLAUDE MACK LIGHTFOOT,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR PETITIONER

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

INDEX

	PAGE
Opinion Below	1
Jurisdiction	1
Statutes Involved	1
Questions Presented	2
Statement of the Case	3
The Indictment	3
The Motions to Dismiss the Indictment	4
The Issues of Fact	5
The Evidence	5
(1) Acts and Declarations of the Petitioner	8
(2) The Opinion Testimony	13
(3) The "Classical" Communist Literature	15
(4) The Current Teaching and Advocacy of the Communist Party	17
The Conviction and Sentence	18
The Opinion Below	18
Summary of the Argument	19
Argument:	
I. The decision below that the evidence sustains the verdict violates accepted and constitutionally protected standards governing proof of guilt	31
A. Knowledge	31
B. Intent	41

PAGE

II. The membership clause of the Smith Act is unconstitutional on its face and as applied by the court below 44

A. The Omission of Intent as an Element of the Offense 45

B. The Imputation of Guilt Solely by Reason of Association 48

C. The Absence of a Clear and Present Danger 54

1. Face Invalidity 54

2. Application 56

III. It was reversible error to deny petitioner's motion that the trial judge inspect the contemporaneous report made to the F.B.I. by the witness, Brzek, concerning the subject matter of his testimony, for the purpose of determining whether the report contradicted the testimony and should therefore be made available to the defense 61

IV. The erroneous admission of prosecution evidence requires a reversal 67

A. The Lautner Testimony 67

B. The Meyer Testimony 71

C. The "Classical" Literature 73

V. It was error to instruct the jury that the teaching and advocacy alleged in the indictment has reference to the teaching and advocacy of the Communist Party as an entity and not to that of its members individually 75

PAGE

VI. Prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act 76

VII. The findings of the Communist Control Act with reference to the Communist Party deprived the petitioner of the right to a fair and impartial trial 84

Conclusion 87

Appendix A: Statutes Involved:

The Smith Act 89

Section 4(f) of the Internal Security Act 89

Sections 2, 3 and 4 of the Communist Control Act 90

Appendix B: Summary of the Testimony Concerning Meetings Addressed or Attended by Petitioner 93

Appendix C: Excerpts from the Congressional Debate on the Communist Control Act 99

Cases Cited

	PAGE
Adler v. Board of Education, 342 U. S. 485	46
American Communications Association v. Douds, 339 U. S. 382	24, 52
Barrett v. United States, 33 F. 2d 115	70
Baumgartner v. United States, 322 U. S. 665	42, 47
Belanger v. Alton Box Company, 180 F. 2d 87	65
Boehm v. United States, 123 F. 2d 791	63
Bridges v. Wixon, 326 U. S. 135	48
Chastleton Corp. v. Sinclair, 264 U. S. 543	59
Ching v. United States, 264 F. 639	65
Cole v. Arkansas, 333 U. S. 196	54
Communist Party v. Subversive Activities Control Board, 351 U. S. 115	66, 78
Coronado Coal Co. v. United Mine Workers of America, 268 U. S. 295	76
Crosby v. Pacific S. S. Lines, 133 F. 2d 470	63
De Jonge v. Oregon, 299 U. S. 353	24, 49
Delaney v. United States, 199 F. 2d 107	86
Dennis v. United States, 341 U. S. 494	22, 24, 41, 45, 54, 56, 74, 87
Edwards v. United States, 312 U. S. 473	62
Federal Trade Commission v. Cement Institute, 333 U. S. 683	72
Fisher v. United States, 231 F. 2d 99	64
Frank v. Mangum, 237 U. S. 309	85
Frankfeld v. United States, 198 F. 2d 679	37
Ginsberg & Sons v. Popkin, 285 U. S. 204	83
Gordon v. United States, 344 U. S. 414	62, 64
Hartzell v. United States, 322 U. S. 680	42, 43
Haywood v. United States, 268 F. 795	72
Herndon v. Lowry, 301 U. S. 242	24, 51

PAGE

Jencks v. United States, 226 F. 2d 540, No. 23, this Term 64
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U. S. 123 48

Kammann v. United States, 259 F. 192 73
Knauer v. United States, 328 U. S. 654 ..... 42, 47
Kotteakos v. United States, 328 U. S. 750 48
Krulewitch v. United States, 336 U. S. 440 ..... 69, 70, 71

Langer v. United States, 76 F. 2d 817 72

Manley v. Georgia, 279 U. S. 1 85
McDonald v. Thompson, 305 U. S. 263 78
McWhorter v. United States, 281 F. 119 69
Mesarosh v. United States, No. 20, this Term 7, 14
Mooney v. Holohan, 294 U. S. 103 85
Moore v. Dempsey, 261 U. S. 86 85

People v. Davi 56 Mich. 569 65

Quercia v. United States, 70 F. 2d 997 69

Rex v. Stockdale, 22 How. St. Tr. 257 38

Scales v. United States, 227 F. 2d 581, No. 29, this Term 3, 7, 14, 37, 48, 53, 54, 60, 70, 83
Schneiderman v. United States, 320 U. S. 118 ..... 20, 37, 38, 42, 47, 48
Shelton v. United States, 205 F. 2d 806 63
Sorenson v. United States, 168 F. 785 69

United Mine Workers of America v. Coronado Coal Co., 259 U. S. 344 76
United States v. Blum, D. C. S. D. Ind. 3
United States v. Blumberg, D. C. E. D. Pa. 3
United States v. Davis, D. C. S. D. N. Y. 3
United States v. Dennis, 183 F. 2d 201 ..... 28, 37, 47, 58, 68, 70, 72

PAGE

United States v. Dennis, D. C. S. D. N. Y. 3
United States v. De Normand, 149 F. 2d 622 63
United States v. Foster, D. C. S. D. N. Y. 3
United States v. Flynn, 216 F. 2d 354 58
United States v. Flynn, 130 F. Supp. 412 66
United States v. Gates, D. C. S. D. N. Y. 3
United States v. Ginn, 222 F. 2d 289 83
United States v. Grayson, 166 F. 2d 863 62
United States v. Hall, D. C. S. D. N. Y. 3
United States v. Hauck, 155 F. 2d 141 42
United States v. Hellman, D. C. Mont. 3
United States v. Le Bron, 222 F. 2d 531 63
United States v. Krulewitch, 145 F. 2d 76 ..... 62, 63
United States v. Mesarosh, 223 F. 2d 449 ..... 37, 58, 72
United States v. Mesarosh, 116 F. Supp. 345 63
United States v. Noto, D. C. W. D. N. Y. 3
United States v. Reynolds, 345 U. S. 1 62
United States v. Russo, D. C. Mass. 3
United States v. Schneiderman, 106 F. Supp. 731 ... 63
United States v. Simonds, 148 F. 2d 177 63
United States v. Stachel, D. C. S. D. N. Y. 3
United States v. Thompson, D. C. S. D. N. Y. 3
United States v. Weiss, D. C. N. D. Ill. E. D. 3
United States v. White, 322 U. S. 694 76
United States v. Winter, D. C. S. D. N. Y. 3
United States v. Yuginovich, 256 U. S. 450 83

Wolf v. United States, 259 F. 388 72

Yates v. United States, 225 F. 2d 146, Nos. 6-8, this Term 7, 14, 58, 63

Constitution and Statutes Cited

	PAGE
First Amendment	46
Fifth Amendment	46
Communist Control Act	3, 80, 84
Immigration and Nationality Act	4, 75
Internal Security Act	3, 76
Labor Management Relations Act	52, 76
Smith Act	3
P. L. 766, 84th Cong., 2d Sess.	4
P. L. 880, 84th Cong., 2d Sess.	4
18 U. S. C. 2384	54

Legislative Materials Cited

96 Congressional Record	80, 82
100 Congressional Record	81
Senate Report No. 1365, 81st Cong., 2d Sess.	79
Senate Report No. 2369, 81st Cong., 2d Sess.	80

Miscellaneous Citations

Acheson, A Democrat Looks at His Party (1955)	49
Biddle, The Fear of Freedom (1951)	49
Biddle, Subversives in Government, Annals of American Academy of Political Science, July, 1955	66
Chaffee, Free Speech in the United States (1954)	49
Commager, The Pragmatic Necessity of Freedom; in Civil Liberties Under Attack (a symposium) (1951)	49
Eisenhower, N. Y. Times, October 21, 1954, January 5, 1955	59
Krushchev, N. Y. Times, February 15, 1956	39
Matusow, False Witness (1955)	66
O'Brian, New Encroachments on Freedom, 66 Har. L. Rev. 1	49
Rovere, The Informer, Harpers Magazine, May, 1955	66
Waldman, Albany: The Crisis in Government (1920)	48
Warren, Address, 40 A. B. A. Jour. 955	60
Webster, New International Dictionary	35

Supreme Court of the United States

October Term, 1966

No. 32

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF FOR PETITIONER

Opinion Below

The opinion of the Court of Appeals (R. 619) [1] is reported at 228 F. 2d 861.

Jurisdiction

The Court has jurisdiction under 28 U. S. C. 1254.

Statutes Involved

The pertinent portions of the Smith Act (18 U. S. C. 2385), the Internal Security Act (50 U. S. C. 783(f)) and the Communist Control Act (50 U. S. C. 841-43) are set forth in Appendix A.

---

[1] "R." refers to the printed record. "G. Ex." designates an exhibit offered by the prosecution and "D. Ex." an exhibit offered by petitioner. "App." refers to an appendix to this brief.

Questions Presented

1. Whether the decision below that the evidence sustains the verdict violates accepted and constitutionally protected standards governing proof of guilt.

2. Whether the membership clause of the Smith Act (18 U. S. C. 2385) is unconstitutional on its face or as applied in this case.

3. Whether the trial court erred in denying petitioner's motion that the court inspect the contemporaneous report made to the F.B.I. by a prosecution witness, concerning the subject matter of his testimony, for the purpose of determining whether the report contradicted the testimony and should therefore be made available to the defense.

4. Whether the conviction and the affirmance below were based on evidence which should have been excluded as incompetent, irrelevant and remote.

5. Whether the trial court erroneously construed and applied the membership clause of the Smith Act and the indictment in instructing the jury that the teaching and advocacy to which the indictment refers is the teaching and advocacy of the Communist Party as an entity and not that of the members individually.

6. Whether the immunity conferred by section 4(f) of the Internal Security Act (50 U. S. C. 783(f)) bars prosecution of the offense charged in the indictment.

7. Whether the findings made by Congress with reference to the Communist Party in the Communist Control Act (50 U. S. C. 841-43) deprived petitioner of the right to a fair and impartial trial.

Statement of the Case

This case presents for review a judgment of the Court of Appeals for the Seventh Circuit which affirmed the conviction of petitioner, after a jury trial, under a one count indictment (R. 3) charging violation of the so-called membership clause of section 2 of the Smith Act. The clause proscribes membership in a society of persons who teach or advocate the overthrow or destruction of the government of the United States by force or violence, knowing the purpose thereof.

This case and *Scales* v. *United States*, 227 F. 2d 581, No. 29, this Term, involve the first trials under the membership clause.[2] The two cases present identical questions as to the constitutionality of the statute on its face, the effect of section 4(f) of the Internal Security Act as a bar to the indictments, and the effect of sections 2, 3 and 4 of the Communist Control Act on the right of the petitioners to a fair and impartial trial.

The Indictment

The membership clause of section 2 of the Smith Act, together with the organizing clause of the same section, provides:

---

[2] There have been fourteen additional indictments under the membership clause: *United States* v. *Blumberg*, E. D. Pa.; *United States* v. *Noto*, W. D. N. Y.; *United States* v. *Weiss*, N. D. Ill.; *United States* v. *Russo*, Mass.; *United States* v. *Blum*, S. D. Ind.; *United States* v. *Hellman*, Mont.; *United States* v. *Dennis*, *United States* v. *Gates*, *United States* v. *Winter*, *United States* v. *Davis*, *United States* v. *Stachel*, *United States* v. *Thompson*, *United States* v. *Hall*, *and United States* v. *Foster*, all S. D. N. Y. Trials in the *Blumberg* and *Noto* cases have resulted in convictions. None of the other cases has been tried. District Judges in the *Weiss*, *Russo* and *Hellman* cases have continued the trials until after the Court has disposed of this case and the *Scales* case.

"Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow of any such government [in the United States] by force or violence; or becomes or is a member of, or affiliates with any such society, group or assembly of persons, knowing the purpose thereof—Shall be fined not more than $10,000 or imprisoned not more than ten years, or both * * *."[3]

The indictment (R. 3), returned on May 14, 1954, charges in two paragraphs of a single count:

1. That, continuously since July 26, 1945, the Communist Party of the United States has been "a society, group and assembly of persons who teach and advocate the overthrow and destruction of the government of the United States by force and violence as speedily as circumstances would permit."

2. That, continuously since July 26, 1945, the petitioner has been a member of the Communist Party "well knowing" that it is a society, group and assembly of persons who teach and advocate the doctrine alleged in paragraph 1, "and said defendant intending to bring about such overthrow by force and violence as speedily as circumstances would permit."

The Motions to Dismiss the Indictment

The petitioner moved to dismiss the indictment on the grounds that, (a) the membership clause of the Smith Act is unconstitutional, (b) the indictment was barred by

---

[3] A 1954 amendment to section 349 of the Immigration and Nationality Act provides that a citizen shall forfeit his nationality upon conviction under this section. 8 U. S. C. 1481(a)(9). P. L. 766, 84th Cong., 2d Sess., increases the maximum penalty to $20,000 or twenty years, or both. Section 121(a) of P. L. 880, 84th Cong., 2d Sess., authorizes the imposition of an additional penalty of forfeiture of the accumulated social security credits of the defendant.

section 4(f) of the Internal Security Act, and (c) the Congressional findings of the Communist Control Act denied him a fair and impartial trial (R. 5, 6). The motions were denied (R. 7).

The Issues of Fact

Petitioner's membership in the Communist Party during the indictment period was conceded (R. 10).

The issues of fact for the jury, therefore, related exclusively to the petitioner's knowledge and intent, *i.e.*:

1. Whether he knew the Communist Party as a society of persons who advocated the overthrow of the government by force and violence as speedily as circumstances would permit; and

2. Whether he intended to bring about such overthrow by force and violence as speedily as circumstances would permit.

As the trial court instructed the jury (R. 581-82), the teaching and advocacy alleged in the indictment concerns expressions calculated to incite persons to take the action advocated and not merely to induce discussion or belief.

As the trial court further instructed the jury (R. 580), the prosecution was required to establish that the petitioner had guilty knowledge and intent at some time between May 14, 1951 and May 14, 1954, the three-year statutory period next preceding the return of the indictment.

The Evidence

The prosecution called eight witnesses whose testimony is material.[4] All were former members of the Communist

---

[4] Four other witnesses identified documents which established that, as conceded, petitioner was a member and officer of the Communist Party during the indictment period (R. 16-28; G. Exs. 1-16). The testimony of an additional witness was excluded because it related to matters subsequent to the indictment (R. 31) and that of another was stricken as remote (R. 472).

Party. Five had joined at the request of the F.B.I. to spy on the organization and had received monies from it.[5] A sixth, Lautner, is a full-time professional witness for the Department of Justice in anti-Communist cases (R. 215).

One witness (Meyer) testified to conversations with the petitioner in the period from 1934 to 1942. Six testified to their attendance at meetings or classes where they saw the petitioner or heard him speak. The testimony of the remaining witness (Lautner) was confined to giving his "expert" opinion as to the aims and objectives of the Communist Party and the meaning of the term, Marxism-Leninism. (See *infra*, pp. 13-15.)

The prosecution introduced exhibits consisting primarily of the constitution of the Communist Party (G. Ex. 45; R. 263); excerpts from the so-called "classics" or basic writings of Marxism-Leninism, including the *Communist Manifesto,* first published in 1848 and books by Lenin and Stalin, the most recent of which was written in the early 1920's (G. Exs. 18, 19, 21, 23, 25, 41; R. 209, 227, 229, 231); the *History of the Communist Party of the Soviet Union,* published in 1938 (G. Ex. 22; R. 209, 227, 229, 231); and published writings of the petitioner (G. Exs. 57, 58, 59, 60, 63, 64, 66; R. 344-46, 363).

Petitioner's affirmative case was confined to the introduction of one exhibit and the reading of portions of exhibits offered by the prosecution (D. Ex. 3; R. 473, 476-80, 486-87).

All that the evidence established with reference to the petitioner was (a) that for many years he had been a member and officer of the Communist Party and had taught in its schools; (b) that he knew that the Communist Party based itself on the principles of Marxism-Leninism, (c) that he was an adherent of these principles and (d) that he was familiar with excerpts from the "classical" writings of Marx, Engels, Lenin and Stalin offered in evi-

---

[5] Herron (R. 34, 52), Cummings (R. 434), Czarnowski (R. 317, 387-89), Ondrejka (R. 303), and Brzek (R. 452, 463).

dence by the prosecution. There was no evidence that the petitioner had ever advocated the violent overthrow of the government or stated that it was his intention to bring about such overthrow. Nor was there evidence that petitioner had ever stated that he understood the program of the Communist Party or of Marxism-Leninism to include the advocacy of violence or had acquiesced in a statement to that effect by any other person.

Moreover, the prosecution's "expert" witness did not testify that in his opinion the Communist Party or the teachings of Marxism-Leninism advocated the violent overthrow of the government.[6] On the contrary, he stated (R. 281) that it was the position of the Communist Party that if, at some future time, the transition to socialism in this country could not be realized peacefully by elections and parliamentary means, it would only be because the trusts and monopolies would try to prevent such social change by force and violence.

The prosecution's theory of the case, concurred in by the trial judge (R. 595-96) and by the court below (R. 624-26), was that the excerpts introduced by it from the "classical" writings of Marx, Engels, Lenin and Stalin, as it interpreted them, advocate the violent overthrow of capitalist governments as speedily as circumstances permit; that (notwithstanding the testimony of its "expert") this interpretation of the "classical" literature and current incitements to overthrow the government of the United States could be ascribed to the Communist Party solely by virtue of the latter's acknowledged adherence to the principles of Marxism-Leninism; and that guilty knowledge and intent on the part of the petitioner could be inferred

---

[6] In this respect, Lautner's testimony differed sharply from that given by him in the other Smith Act cases, now before the Court. *Yates* v. *United States*, 225 F. 2d 146, Nos. 6-8, this Term; *Mesarosh* v. *United States*, 223 F. 2d 449, No. 20, this Term, and *Scales* v. *United States*, *supra*.

from his publicly stated belief in these principles and his knowledge of his party's adherence to them.

In what follows, we describe the evidence in detail.

(1) Acts and Declarations of the Petitioner

The evidence of acts and declarations by the petitioner falls into four categories: (a) testimony as to his attendance at meetings where he or other Communists spoke; (b) testimony as to his teaching in Communist Party schools; (c) testimony as to his conversations with others, and (d) exhibits containing his published speeches and writings.

(a) Prosecution witnesses testified as to petitioner's attendance at a total of sixteen meetings from November, 1945 to June, 1951 (R. 43-44, 305-10, 334-35, 346-64, 370-72, 437-38). Only three of these (one in May and two in June, 1951) took place within the three years next preceding the indictment (R. 307-10, 334-35, 370-72). For the convenience of the Court, we have summarized the testimony concerning each meeting in Appendix B. If this testimony is accepted in its entirety,[7] it establishes no more than that the petitioner or other speakers called for the building of the Communist Party, particularly among the Negro people and working people; urged Communists to work more effectively in trade unions and veterans' organizations; expressed their desire for and confidence in the eventual establishment of socialism in this country; praised the Soviet Union and its leaders, and opposed the Marshall Plan and the cold war policies of the Truman adminis-

[7] Twelve of the sixteen meetings, covering the period from 1945 to 1951, were the subject of the uncorroborated testimony of the witness Czarnowski who had been a paid informer throughout that period and, for the four years prior to his appearance on the stand, had derived substantially all of his income from the F.B.I. (R. 386, 399-400). His memory was obviously faulty (*e.g.*, R. 382-86, 395-97) and he admitted that "I think I have got mixed up in some of these meetings" (R. 358).

tration. Additionally, at a meeting in 1947, petitioner was said to have stated that he would not make organization records available to a legislative investigating committee, and to have advised Communists not to reveal their membership publicly if to do so would jeopardize their positions in the community (R. 350-51).[8]

(b) Three witnesses testified that they had attended classes taught by petitioner in Communist Party schools, the most recent of which was held seven years prior to the indictment.

The witness Meyer, a member of the Communist Party from 1934 to 1945, holds bachelor's and master's degrees from Oxford University and did graduate work at the London School of Economics and the University of Chicago (R. 56, 58, 93). From 1938 to 1941, he was the director of the Chicago Workers School, where petitioner taught courses on Marxism-Leninism, the History of the Communist Party of the Soviet Union, and political economy (R. 63, 68). Meyer testified that he made it a practice to attend the classes of all teachers, including petitioner, at least once or twice each term (*ibid*). However, he was not asked about, and gave no testimony concerning the petitioner's teaching.

The witness, Miss Skinner, a member of the Communist Party from 1946 to 1948, had been a clerical worker in the Chicago District Office of the Party (R. 448).[9] In 1946 she took a course in the fundamentals of Marxism, taught by the petitioner in the Abraham Lincoln School (R. 450). In the summer of 1947, she attended a Communist Party School at Lake Ivanhoe, Wisconsin, where the petitioner taught classes in "strategy and tactics" and "history and role of the Party" (R. 450; G. Ex. 54). She was not asked

---

[8] The court below characterized the latter statement as advice to "the membership on the use of the underground" (R. 621).

[9] Skinner and Meyer were the only prosecution witnesses (other than the "technical" witnesses) who were not paid F.B.I. informers.

about, and gave no testimony concerning, the petitioner's teaching in any of these classes.

The witness Brzek followed Miss Skinner to the stand. An informer who joined the Communist Party to spy on it at the request of the F.B.I. (R. 452), he testified that he, like Miss Skinner, had attended the 1947 summer school at Lake Ivanhoe (R. 454). He was unable to recall the names of any of the courses taught at the school until he was shown a mimeographed schedule of classes (R. 456-57, 464-65). Nor could he recall what he was taught in classes other than the Lightfoot classes (R. 467). His story concerning the petitioner's teaching contains the only reference to violence in all of the testimony. It is impossible to paraphrase the witness' semi-literate statement, which appears at R. 460-62. Its essence is contained in the following excerpt:

> "He then spoke on, that we would approach this [10] to avoid bloodshed, but those who had the control wouldn't want to give up.
>
> "However, in capitalistic wars, it is not the capitalists that their blood is spilled. However, in this case it would be their blood.
>
> "Then he went on to explain that it wouldn't be a shooting, it would be more quiet methods of doing that blood end of it.
>
> "The bloodshed end, the bloodshed, it wouldn't be by, say, shooting firearms, to be by a more quiet method. • • •
>
> "He approached us again with, as I remember it, that we will try to avoid bloodshed and we will approach it to avoid bloodshed.
>
> "However, we will not be pushed off. If we have to spill blood, we will.
>
> "That was the last thing he said, that was his actual words, 'If we have to spill blood, we will.'"

Brzek testified that he had made a written report of this episode to the F.B.I. (R. 467-68). The petitioner moved

---

[10] The "this" has no antecedent in the testimony of the witness.

for the production of the report in order that the trial court might inspect it to determine whether it contradicted the testimony of the witness and should be made available to the defense (R. 468, 472). The trial court denied the motion (R. 472).

(c) Two witnesses, Miss Skinner and Meyer, testified to their presence at conversations with petitioner.

Miss Skinner stated that in the year 1947-48 when she was a clerical worker in the Chicago District Office, petitioner came to the office approximately once a month and talked with practically everyone there, including the Communist Party officials of the Chicago District (R. 448-49). She was not asked about, and did not testify concerning, any of these conversations.

Meyer knew and worked with the petitioner in the Communist Party from 1934 to 1942 (R. 61). Early in this period both men were members of the district bureau of the Young Communist League. Later, they served together on the section committee of the South Side section of the Communist Party where they were in charge of the day-to-day work in that area (R. 60, 62-63, 110). They also collaborated on a pamphlet dealing with the position of the Party on the Negro question (R. 110). In addition, as we have noted, they were associated as director and teacher in the Workers School. Meyer described their relationship during these eight years by stating that, "We worked very closely together during a considerable part of the period, and on a reasonably close basis in other parts of the period" (*ibid.*).

The two men discussed theoretical and educational problems of Communism on many occasions (R. 71). In 1940, they engaged in a series of discussion concerning changes in the method of teaching advanced political courses in the Workers School. In that connection, they reviewed the textbooks for these courses, including the *History of the Com-*

munist Party of the Soviet Union, and the "classical" works of Marx, Engels, Lenin and Stalin. Meyer was able to identify the specific passages of the books which he and the petitioner discussed (R. 96-108; G. Exs. 18, 19, 21, 22, 23, 25, 41). He testified that their conversations resulted in agreement "upon what should be taught and how it should be taught" (R. 97).

However, Meyer was not asked and did not testify about the content of the teaching which was agreed upon, or concerning the petitioner's interpretation of these books or his understanding of the application of the passages they discussed to the United States. Nor, with a single exception, was the witness questioned or did he testify as to the content of any other conversation with or statement by the petitioner during the eight years of their intimate association. The exception (R. 114-15) has no relevance whatsoever to petitioner's understanding of the attitude of the Communist Party or of Marxism-Leninism toward the use of force or violence as a means of bringing about social change.

(d) The prosecution introduced a number of the petitioner's published speeches and writings (G. Exs. 57, 58, 59, 60, 63, 64, 66; R. 344-46, 363, 374-80). These deal with methods for building and strengthening the Communist Party, the struggle to eliminate discrimination and violence against the Negro people, the necessity of averting war, the desirability of negotiating a cease-fire in Korea, the significance for the American people of the achievements of the Soviet Union, and other topical political questions. They contain no discussion of the means by which socialism can or should be brought about in this country and, far from advocating violence in any form or for any purpose, demonstrate petitioner's opposition to all forms of violence, including the violence practiced against his people, the Negro people, and the violence of war.

The petitioner's writings avow the author's adherence to the principles of Marxism-Leninism. They contain the only evidence in the entire record concerning his understanding of the meaning and application of these principles. He wrote (R. 475, emphasis supplied):

> "Marxism-Leninism gives us the power of orientation. It enables us to perceive the direction in which things are heading. *It does not, nor can it determine, for us before hand, the form nor the exact time of a new social development.*"

(2) The Opinion Testimony

Lautner testified as an "expert" for the prosecution. His only testimony concerning the petitioner was that he had "checked him in" as a delegate to the 1948 national convention of the Communist Party (R. 170).

Lautner joined the Communist Party in 1929 (R. 132) and held various full-time positions in the organization until his expulsion in 1950 (R. 169), more than four years prior to the indictment. After a year of unemployment, he was employed by the Department of Justice as a "consultant". From January 1951 until his appearance as a witness, he was on the payroll of the Department at a rate of $20 or $25 a day [11] for five days a week as a professional witness in anti-Communist cases (R. 215, 219-21).[12]

Although Lautner had been a full-time official of the Communist Party for over twenty years, had attended a number of its conventions and had studied in its national training school (R. 133, 143, 150-51), he did not testify to any statements made on behalf of the organization or by any of its officers, teachers or members. Instead, the prosecution confined itself to eliciting his opinion concerning the meaning of Marxism-Leninism and the aims and ob-

---

[11] Plus $9 a day for expenses (R. 221).

[12] During his twenty years in the Communist Party, Lautner's earnings ranged from nothing to a maximum of $60 a week (R. 214).

jectives of the Communist Party.[13] This opinion testimony was admitted over objection as to its relevance and competence and notwithstanding the fact that the witness conceded that he was not an expert on the Communist Party and that even those who consider themselves experts sometimes disagree as to whether a writing or statement conforms to the principles of Marxism-Leninism (R. 273-75). Moreover, Lautner was permitted to give his opinion as to the aims and objectives of the Communist Party subsequent to his expulsion in 1950, although his only knowledge of its activity and advocacy after that date was derived from reading its publications (R. 172).[14]

Lautner did not express the opinion that Marxism-Leninism or the Communist Party advocated the violent overthrow of the government. On direct examination, he testified that Marxism-Leninism:

> "* * * is the writings of Marx, Engles, Lenin and Stalin and its application in this period, this present period, known as Imperialism, and the theory and documentation of 'The Proletarian Revolution' in general, and the theory and practice of the dictates [sic] of the proletariat in particular" (R. 205-06).

He further stated that the "final aim" of the Communist Party:

> "* * * is the destruction of the existing social order known as imperialism in this particular period, this era, the destruction of imperialism and its governments, and instituting instead through the prole-

---

[13] In this respect, also, Lautner's testimony here differs from that given by him in the *Scales*, *Yates* and *Mesarosh* cases, *supra*.

[14] Thus, he did not believe himself qualified to state whether or not passages in the *History of the Communist Party of the United States*, by William Z. Foster, the Party's chairman (D. Ex. 3), advocating the transition to socialism in the United States by peaceful, democratic means, represented an authoritative statement of the position of the Communist Party in 1952 when the book was written (R. 288-89).

tarian revolution and the dictatorship of proletariat, socialism.

"In the United States, being the leading imperialist country, these aims pertain as the basic aims of the Communist Party in the United States" (R. 211).

On cross-examination, the witness testified that the Communist Party taught that the practical application of the principles of Marxism-Leninism were always dependent upon the conditions existing at the time and place in question, and hence that passages from Communist literature could not be applied to any and all situations. He further testified that the Communist Party worked for the election of a broad peoples' front coalition government to maintain and preserve democratic rights and liberties, while at the same time it sought to persuade the American people that ultimately socialism would be superior to the present system. Finally, he testified that the position of the Communist Party was that if socialism could not be established in this country by peaceful electoral means, it would only be because the trusts and monopolies would use force and violence to prevent this result (R. 277-81).

(3) The "Classical" Communist Literature

Over the petitioner's objection, the trial court admitted into evidence excerpts from the writings of Marx, Engels, Lenin and Stalin,[15] the *History of the Communist Party of the Soviet Union*, a book by Soviet authors dealing with the history of the Russian Communist Party and its predecessors from 1883 to 1937 (G. Ex. 22), and an article writ-

---

[15] The books from which these excerpts were taken and their original publication dates are: Marx and Engels, *The Communist Manifesto*, 1848 (G. Ex. 18); Lenin, *What Is To Be Done*, 1902 (G. Ex. 41); Lenin, *State and Revolution*, 1917 (G. Ex. 23); Lenin, *Left Wing Communism*, 1920 (G. Ex. 25); Stalin, *Foundations of Leninism*, 1924 (G. Ex. 19); Stalin, *Problems of Leninism*, 1926 (G. Ex. 21).

ten by William Z. Foster in 1945 (G. Ex. 48). Some of these excerpts were in no way connected with the petitioner but were referred to by the witness Lautner as "documenting" his opinion testimony as to the meaning of Marxism-Leninism (R. 206-09) and were received for the limited purpose of their relevance, if any, to such opinion testimony (R. 227-28). Other excerpts were admitted on the basis of the testimony of Meyer that he had discussed them with the petitioner in connection with courses taught by the latter at the Workers School (R. 72, 80-81, 97-108, 228-31). As we have seen, however, there was no testimony by Meyer or any other witness as to petitioner's understanding or interpretation of the latter excerpts or as to how he used or applied them in his teaching.

The excerpts offered in evidence are but small fragments torn from a voluminous body of Communist literature in which the theory and practice of what is known as scientific socialism is set forth and developed. All of the books from which the excerpts were taken were currently on public display and sale at a Chicago bookstore (R. 392). The authors of the works in question have always emphasized that, as in the case of any other science, the propositions of scientific socialism and their application are in a constant state of development and change in the light of changes in objective conditions and the accumulation of experience.

Thus, in a preface written 25 years after the appearance of the *Communist Manifesto,* Marx and Engels wrote (G. Ex. 18):

> "The practical application of the principles [of scientific socialism] will depend, as the Manifesto itself states, everywhere and at all times, on the historical conditions for the time being existing * * *."

Similarly the authors of the *History of the Communist Party of the Soviet Union* warned (R. 474-75):

"It may seem that all that is required for mastering the Marxist-Leninist theory is diligently to learn by heart isolated conclusions and propositions from the works of Marx, Engels, and Lenin, learn to quote them at opportune times, and rest at that, in the hope that the conclusions and propositions thus memorized will suit each and every situation and occasion. But such an approach to the Marxist-Leninist theory is altogether wrong * * *. Mastering the Marxist-Leninist theory means being able to enrich this theory with the new experience of the revolutionary movement, with new propositions and conclusions, it means being able to develop it and advance it without hesitating to replace—in accordance with the substance of the theory—such of its propositions and conclusions as have become antiquated by new ones corresponding to the new historical situation."

(4) The Current Teaching and Advocacy of the Communist Party

Apart from Lautner's opinion testimony, the only evidence in the record concerning the teaching and advocacy of the Communist Party on the transition from capitalism to socialism in the United States is contained in two exhibits.

The first, the current party constitution, introduced by the prosecution, states that the ultimate objective of the organization is "the establishment of socialism by the free choice of a majority of the American people." It further provides for the expulsion of any member "who advocates force and violence or terrorism" (G. Ex. 45; R. 479).

The second exhibit is the *History of the Communist Party of the United States,* by William Z. Foster, published in 1952, and identified by a prosecution witness as containing an authoritative statement of the position of the Communist Party on various questions of the day (D. Ex. 3; R. 426-27). The book contains a detailed outline of the party's teaching and advocacy concerning what

the author calls "the American road to socialism," involving the transition from capitalism to socialism by peaceful, democratic processes (R. 476-79). While emphasizing that this outline is not a blueprint for the eventual establishment of socialism in the United States, Foster concludes:

> "What stands out clearly in this analysis, however, is that in its perspective for ultimate socialism in the United States, the Communist Party, as the Supreme Court, with a rare exhibition of objectivity, clearly stated in the *Schneiderman* case of 1942, always strives for a peaceful and democratic course to socialism, supported at all times by a huge majority of the American people."

The Conviction and Sentence

The trial judge reserved decision on petitioner's motion for judgment of acquittal until after the verdict. He stated however that he felt himself bound by the decisions in Smith Act conspiracy cases which, as he put it, "modified the rules of evidence that I have known anything about for the last number of years" and changed the law as he had practiced it during his many years on the bench (R. 472-73, 480-81).

Accordingly, after the return of the verdict, he denied petitioner's motion and imposed sentence of five years' imprisonment and a fine of $5,000 (R. 610-11).

The Opinion Below

The court below held that the evidence was sufficient to support the verdict. It sustained the constitutionality of the statute, rejected petitioner's contentions with respect to section 4(f) of the Internal Security Act and the Communist Control Act and affirmed the evidentiary ruling of the trial court which petitioner urged required a reversal (R. 619-34).

Summary of the Argument

I. The decision below that the evidence sustains the verdict violates accepted and constitutionally protected standards governing proof of guilt.

A. There was no proof of guilty knowledge.

The evidence spanned 19 years of petitioner's life and membership in the Communist Party. Yet it was not shown that he had ever said, written or done anything to advocate revolutionary violence or to indicate an understanding, opinion or belief that the Communist Party did so. If petitioner had guilty knowledge, the prosecution was in a position to prove it by clear and convincing evidence. For the witnesses, Meyer and Skinner, attended many of his classroom lectures on the principles of Marxism-Leninism and participated in or were present at numerous private conversations in which he discussed these principles and the activities of the Communist Party. However, the prosecution sedulously avoided questioning either witness as to the content of petitioner's lectures or conversations.

The only reference by a prosecution witness to violence in any context was in Brzek's confused, illiterate and frequently unintelligible "bloodshed" story. If the story is credited, it establishes that, far from advocating violence, petitioner urged its avoidance and, at most, warned of a possible reluctant resort to force if necessary for self-defense.

The decision below that the evidence established guilty knowledge is based on a theory of guilt by imputation. The premise that the Communist Party advocated violence rests entirely upon the assumption that the court's interpretation of the "classical" literature constitutes a body of immutable dogma which may be currently imputed to the Communist Party by virtue of its acknowledged adherence to the principles of Marxism-Leninism.

The court imputed to petitioner knowledge of the teaching and advocacy which it thus imputed to the Communist Party from the bare facts that petitioner was an active member and officer of the organization, was familiar with the "classical" literature, urged its study, and used it in his classroom teaching.

The court below ignored the evidence which refutes its conclusion. The testimony of the prosecution "expert" Lautner, the constitution of the Communist Party, and Foster's *History* all prove for the purposes of this case that the Communist Party advocated a peaceful and democratic path to socialism in the United States. This evidence, which was uncontradicted, affirmatively establishes petitioner's innocence.

But even if the inferences indulged in below were not belied by the evidence they would nevertheless be completely unwarranted. The issue concerning the "classical" literature is not whether it can be reasonably interpreted as advocating violence, but whether the Communist Party, to petitioner's knowledge, so interpreted these writings and taught and advocated that this interpretation was currently applicable to the government of the United States. There is no evidence that the Communist Party, to petitioner's knowledge or otherwise, so interpreted the "classics" or so taught and advocated. On the contrary, the proof shows that the petitioner, like other Communists, and in agreement with the opinion in *Schneiderman* v. *United States*, rejects a dogmatic reading of the political polemics of Marx, Engels, Lenin and Stalin or their mechanical application to situations outside of the historical context in which they were written. Accordingly, even if it could be said that these authors unequivocally advocated violent overthrow as the precondition for the establishment of socialism during the period when they wrote, the imputation of such advocacy to the Communist Party and knowledge of it to petitioner during the indictment period would still be wholly unwarranted.

In fact, however, as *Schneiderman* held, the excerpts from the "classical" literature in evidence here are susceptible of an innocent interpretation. Under these circumstances, the reprehensible interpretation may not be imputed to petitioner in the absence of overt acts showing that such was his interpretation. The court below cited no such overt acts, and there were none.

Finally, it would not have been sufficient had the prosecution proved that, to petitioner's knowledge, the Communist Party advocated revolutionary violence as a matter of political theory. What was required was proof that petitioner knew the Communist Party to have been engaged in incitements to violence. Yet there is not a scintilla of evidence to that effect. The court below made no attempt to bridge the gap between study and discussion of the "classical" literature and current incitements to political violence "as speedily as circumstances would permit," but simply ignored the fact that incitement is an element of the offense.

B. There was no proof of intent.

The two elements of the crime charged—knowledge and intent—must each stand on its own footing. Membership in an organization with knowledge that it has an illicit objective does not prove guilty intent in the absence of conduct by the member which establishes that he joined for the purpose of effectuating that objective. There is no evidence of such conduct here. Petitioner's speeches, teaching, conversations and writings over a twenty-year period are devoid of advocacy of violence. The court below, however, found that guilty intent had been proved. It relied primarily on the same factors which it found established guilty knowledge: petitioner's years of active membership and devotion to the Communist Party, and his familiarity with its supposedly severe inner-party dis-

cipline. Exactly the same factors were rejected by the court in the *Schneiderman* case as proof that a Communist Party member believed in political violence. The only additional matter relied on below was a sentence—taken out of context—from the statement attributed to petitioner by Brzek. However, as shown above, that statement, if made, was entirely consistent with innocence.

It is apparent from the foregoing analysis of the record and the opinion below, that the conviction was sustained only by ignoring the evidence exonerating petitioner, and disregarding the presumption of innocence, the principle that guilt is personal, the constitutional protection accorded association and expression, and the provision of section 4(f) of the Internal Security Act that the holding of office or membership in a Communist organization shall not per se constitute a violation of any criminal statute.

II. The membership clause of the Smith Act is unconstitutional on its face and as applied by the court below.

The membership clause differs in decisive respects from the advocacy and organizing provisions of the Smith Act, sustained in *Dennis* v. *United States*. The latter punish individuals for their own acts or advocacy. The membership clause, on the other hand, does not require proof of any overt conduct other than the act of joining the organization. It does not penalize the accused for his advocacy, but for the advocacy of other members of the organization. It is not advocacy but association that the membership clause makes criminal. The holding in *Dennis* is therefore inapplicable. Indeed, under the rationale of that decision, the membership clause is unconstitutional on its face and as applied in this proceeding.

A. The membership clause contains no reference to the intent of the accused. Applied in accordance with its text, it authorizes the conviction of a member who does not believe in violent revolution but who joined the organization for some other and entirely legitimate purpose. So construed, the statute violates due process as well as the First Amendment.

The indictment seeks to remedy this defect by importing into the membership clause, as an element of the offense, a specific intent "to bring about such overthrow by force and violence as speedily as circumstances would permit." This effort to validate the statute is based on a fallacious application of the *Dennis* decision.

Dennis held that seditious intent was an unexpressed but necessarily implied element of the crimes defined in the advocacy and organizing provisions of the Smith Act because those who advocate or organize for violent overthrow obviously intend to bring about overthrow. But the nexus between act and intent which was the foundation for the result in *Dennis* is lacking in the case of the membership clause. It cannot rationally be said that because a person joins an organization knowing it to advocate violent overthrow, he must intend to accomplish that purpose. As the Court has pointed out in a number of cases, the member may have joined for an entirely different purpose. Accordingly, no inference as to intent can arise from membership in an organization with knowledge of its purpose. Moreover, a comparison of the varying treatment given the elements of knowledge and intent in the advocacy, organizing, literature distribution, and membership provisions of the Act demonstrates that the omission of intent from the membership clause was deliberate.

B. Even if the membership clause could be said to import intent as an element of the offense, it would nevertheless be unconstitutional for imputing guilt from association, unaccompanied by any overt act of wrongdoing. The membership clause represents the first Congressional attempt in our history to apply the "abhorrent" doctrine of guilt by association to citizens. In *De Jonge* v. *Oregon* and *Herndon* v. *Lowry*, the Court invalidated state legislation under which the accused were convicted for membership in the Communist Party, which was assumed to advocate political violence, in the absence of proof of any illegal act or illicit advocacy on their part. *American Communications Association v. Douds*, in reaffirming the doctrine of these cases, clearly foreshadowed the invalidity of the membership clause.

The court below decided the case as though it had arisen under the advocacy provisions of the Act, disregarding the fact that the offense defined in the membership clause rests solely on association. It also expressed agreement with the opinion in the *Scales* case which bypasses the problem of guilt by association as well as all other First Amendment questions by erroneously treating the membership clause as a statute punishing conspiracies to overthrow the government.

C. On its face and as applied, the membership clause fails to satisfy the clear and present danger test as formulated and employed in the *Dennis* case.

1. The conduct involved in a conspiracy to violate the advocacy and organizing provisions of the Smith Act, considered in *Dennis*, is of an entirely different order from that prohibited by the membership clause. The latter does not involve the element of conspiracy so that the factor which *Dennis* held "creates the danger" is lacking. Nor does it require proof that the accused engaged or planned to engage in any advocacy or organizational activity whatsoever. Indeed, the thrust of the clause is

against members who are completely passive or whose activity is confined to legitimate advocacy. But the membership of a single individual whose activity is so confined cannot constitute a danger to the government under any circumstances. The addition of such subjective factors as knowledge and intent (if the latter is an element of the offense) cannot increase the "danger" in the absence of any overt conduct beyond the bare act of association.

The Court in *Dennis* emphasized "the intent of the defendants, the nature of their activities" and "their power to bring about the evil" as decisive of the constitutional question. The membership clause authorizes the conviction of one who engages in no "activities," is powerless to "bring about the evil," and who need not be shown to have a seditious intent. Thus none of the constitutional requisites for a conviction under the advocacy and organizing provisions are elements of the offense created by the membership clause.

2. Under the *Dennis* decision, the application of the clear and present danger test to a Smith Act case requires determining whether the conduct of the defendant as established by the evidence, in the light of the international situation existing at the time of the indictment, gave rise to a clear and present danger of the violent overthrow of the government.

The evidence as to petitioner's activities during the three years preceding the indictment was that he had been a member and officer of the Communist Party, had spoken at three meetings and had written two articles. His written and spoken words contained nothing but legitimate political advocacy and could not be even remotely "dangerous." Moreover, the international setting in May, 1954, the date of the indictment, was characterized by the absence of any active battlefield in the world, a marked relaxation of international tensions and the recession of the war danger. Thus the background factors which the

Dennis case stressed as creative of the danger had ceased to exist as the time of the indictment here.

If, as *Dennis* holds, the application of the clear and present danger test requires weighing "the gravity of the 'evil' discounted by its improbability" against the values inherent in the First Amendment, the balance in this case demands a reversal of the conviction.

III. A reversal is required because of the denial of petitioner's motion that the trial court inspect Brzek's contemporaneous report to the F.B.I. concerning petitioner's lecture at the Ivanhoe, Wisconsin, school so that the Court could determine whether the report contradicted the testimony of the witness and should therefore be made available to the defense.

Brzek's attribution to petitioner of repeated references to bloodshed was inflammatory and prejudicial. Moreover, the prosecution leaned heavily on his testimony in its summation and the court below relied on it in holding that the evidence sustained the verdict. The prosecution did not deny the availability of the report or assert that its contents were privileged.

If the report in fact contradicted Brzek's testimony, petitioner was entitled to inspect it, use it in cross-examination and introduce it in evidence. The report itself contained the best, if not the only available, evidence of a contradiction. Petitioner's motion should therefore have been granted, as the decisions in a number of circuits hold. Disregarding these decisions, the court below erroneously treated petitioner's motion as one which asked for the immediate submission of the report to him, and affirmed the ruling of the trial judge on the ground that petitioner had failed to establish a contradiction between the report and the testimony.

Petitioner's motion was made before the prosecution rested. The suggestion below that it was untimely is

therefore without basis in fact.

The decision below is not only contrary to the great weight of authority in other circuits but violates the principle, fundamental to the administration of justice, that an accused should have access to evidence within the possession of the prosecution that the testimony of one of its witnesses is tainted.

IV. The erroneous admission of prosecution evidence requires a reversal.

A. Lautner's personal opinion concerning the aims of the Communist Party and the meaning of Marxism-Leninism was plainly irrelevant to petitioner's knowledge and intent, the only issues of fact for the jury. The Lautner opinion testimony was also incompetent, since, at most, it represented the witness' conclusion from the acts and declarations of unidentified third parties unconnected with the petitioner. Decisions admitting similar opinion testimony in Smith Act conspiracy cases are based on the co-conspirator rule and, if correct, are inapplicable to a case in which no conspiracy is charged. The erroneous admission of the Lautner testimony requires a reversal because it served as the foundation for the introduction in evidence of numerous prejudicial excerpts from the "classical" literature on which the case for conviction is staked.

B. The testimony of Meyer served only as a vehicle for the introduction of excerpts from the "classics" which he testified he had discussed with petitioner. The witness said nothing concerning the content of the discussion, petitioner's interpretation of the excerpts, or his understanding of their application to conditions in the United States. Inasmuch as the discussion took place prior to the enactment of the Smith Act, the Meyer testimony would have been of doubtful admissibility even if it had established guilty knowledge or intent at the time the dis-

cussion occurred. The testimony was clearly inadmissible because the bare fact that petitioner was familiar with certain Marxist books and had used them as class room texts prior to the Smith Act and fourteen or more years prior to the indictment had, at best, only the slightest relevance to his knowledge and intent during the indictment period. Under these circumstances, decisions sustaining the admission of pre-Act evidence in Smith Act conspiracy cases, if correct, are inapplicable, as the Court of Appeals in the *Dennis* case recognized.

C. If it was error to admit the Meyer and Lautner testimony concerning the excerpts from the "classics," the excerpts themselves should, of course, have been excluded. They were inadmissible for the additional reason that there was no evidence that petitioner (or, for that matter, the Communist Party or any of its members) had ever understood or taught that the "classical" literature advocated the violent overthrow of the government of the United States. The record shows only that petitioner and the Communist Party engaged in peaceable study, discussion and teaching of these writings. Such conduct is not and cannot be proscribed.

V. It was error to instruct the jury that the teaching and advocacy alleged in the indictment has reference to the teaching advocacy of the Communist Party as an entity and not to that of its member individually. The statute and the indictment do not refer to the advocacy of the organization but to that of "the persons who" are its members. Petitioner's request for an instruction to this effect was denied, and the instruction complained of was given instead.

Had Congress intended the test of guilt to be knowledge of the alleged advocacy of the organization as an entity, it could have said so in clear and unequivocal terms, as it has in other legislation relating to the same general subject matter. The distinction between the two

formulations is crucial since the acts or advocacy of an unincorporated association cannot be imputed to its members in the absence of authorization or ratification by them. Had petitioner's requested instruction been given, there could not have been a conviction, for there was no evidence that, to the knowledge of petitioner or otherwise, individual members of the Communist Party engaged in, authorized or ratified the proscribed advocacy.

VI. Prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act which provides that, "Neither the holding of office nor membership in any Communist organization by any person shall constitute per se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute." It is obvious from the reference to "any other criminal statute" that Congress believed membership per se to be a crime under some law other than the Internal Security Act. The only other criminal statute on the books which might have been applicable to Communist Party members by virtue of their membership was the membership clause of the Smith Act. Since this statute makes knowledge that the organization has an illicit purpose an element of the offense, the term membership "per se" must have been intended to embrace membership with such knowledge. A contrary construction would render the reference to "any other criminal statute" meaningless.

This reading of 4(f) is confirmed by its legislative history. The reference to "any other criminal statute" was added to the section by an amendment on the floor of the House, only after repeated warnings in both the Senate and the House that the immunity conferred by the section in its original form was inadequate to assure the enforceability of the registration provisions of the bill because it did not provide immunity from prosecution under the membership clause of the Smith Act.

The fact that Congress intended section 4(f) to immunize Communists from prosecution under the membership clause is confirmed by the legislative history of the Humphrey amendment to the Communist Control Act. That amendment proposed to create a crime identical with the one charged in the indictment by making it an offense to be a member of the Communist Party with knowledge of its alleged seditious purpose. The amendment was defeated only because of representations by the Attorney General and Congressional leaders that its enactment would repeal an essential feature of the immunity conferred by 4(f) and nullify the registration provisions of the Internal Security Act.

The savings clause of the Internal Security Act does not override the reference in 4(f) to "any other criminal statute" since it is well established that a general savings clause cannot prevail over express provisions in the body of the enactment.

VII. The finding of Congress in the Communist Control Act that the Communist Party advocates the violent overthrow of the government deprived the petitioner of the right to a fair and impartial trial. By this finding, Congress predetermined one of the elements of the offense charged in the indictment, as construed by the trial court. It would be naive to suppose that a jury, presumed to know the law, would ignore this Congressional fiat. The damage from the finding could not have been discovered by *voir dire* questions or cured by instructions, both of which would only have resulted in specifically directing the attention of the jurors to the legislation.

Congress cannot have its cake and eat it by declaring a named organization to be engaged in criminal conduct while preserving the right to a fair trial of the precise issue it has predetermined by fiat. In fact, Congress had no reason to believe that the Communist Control Act

would give rise to this dilemma since, when it passed that act, it was of the opinion that the prosecution of Communists under the membership clause had already been barred by section 4(f) of the Internal Security Act.

ARGUMENT

I. The decision below that the evidence sustains the verdict violates accepted and constitutionally protected standards governing proof of guilt.

Under the indictment (R. 3) and the instructions of the trial court (R. 576, 581-82), the conviction of petitioner, an acknowledged member of the Communist Party, required proof beyond a reasonable doubt that, within the three-year statutory period, (1) the Communist Party, to the knowledge of petitioner, advocated the violent overthrow of the government in language calculated to incite persons to take the action advocated as speedily as circumstances would permit, and (2) the petitioner, personally, had the specific intent of bringing about the violent overthrow of the government as speedily as circumstances would permit.[16] Accepting the testimony of the prosecution witnesses in its entirety, there is no evidence which could conceivably support any of these elements of the offense, let alone all of them.

A. Knowledge

The prosecution evidence spanned 19 years of the petitioner's life and membership in the Communist Party.[17] Eight of these years were covered by the testimony of

---

[16] We later show that the intent charged in the indictment has no foundation in the membership clause, and that the latter is unconstitutional on its face because it does not make intent an element of the offense.

[17] From 1934, when Meyer met him (R. 61) to 1953, the date of an article written by him (G. Ex. 66; R. 345).

Meyer, who worked with petitioner intimately from 1938 to 1942, as a fellow-member and officer of the Communist Party of Illinois (R. 61). During the 11 years that followed, the Communist Party and the petitioner were under the close and continuing surveillance of the F.B.I. and its informers.[18] As we have seen, during this nineteen-year period, the prosecution witnesses had heard or observed the petitioner teach in Communist Party classes, address or attend Communist Party meetings and conventions and participate in numerous private conversations (supra, pp. 8-13).

Yet, the prosecution could produce no evidence that the petitioner had ever said, written or done anything to advocate the violent overthrow of the government or to express an understanding, opinion or belief that the Communist Party advocated such overthrow.

If the petitioner had understood the objectives of the Communist Party or the principles of Marxism-Leninism to include advocacy of the violent overthrow of the United States Government, the prosecution had ample opportunity to prove that fact by direct, clear and convincing evidence. For, as we have seen, two of the prosecution witnesses, Meyer and Skinner, had attended petitioner's classes on "Marxism-Leninism", "the fundamentals of Marxism" and "strategy and tactics" (R. 68, 450). In addition, Meyer held an extended series of discussions with the petitioner concerning the content of courses on Marxism-Leninism in which agreement was reached on "what should be taught and how it should be taught" (R. 71, 79-80, 97). Moreover, Miss Skinner had been present during numerous private conversations between petitioner and his associates in the leadership of the Illinois Communist Party (R. 448-49). Clearly, if the petitioner had understood the tenets of the

---

[18] Czarnowski, Cummings and Brzek joined the Party in 1943, Herron in 1944 and Ondrejka in 1949, all for the purpose of spying on it at the request of the F.B.I. (see *supra*, p. 6).

Communist Party and of Marxism-Leninism as embracing advocacy of the violent overthrow of our government, he would have said so in the course of his teaching and intimate discussions. The prosecution, however, sedulously avoided questioning either witness as to the content of these class room lectures and private conversations.

The writings of the petitioner offered in evidence by the prosecution contain lengthy statements of Communist Party policy and numerous references to the principles of Marxism-Leninism. But none of them even remotely suggests the advocacy of force and violence. Indeed, the only relevant reference to Marxism-Leninism makes it plain that the petitioner understood it to eschew all dogmas, including all preconceptions as to the form or time of a new social development (R. 475).

The only reference by a prosecution witness to violence in any context occurred in the testimony of the informer, Brzek (supra, pp. 10-11). The witness' version of petitioner's remarks in two class-room lectures delivered eight years before the trial and well outside the three-year statutory period cannot possibly give support to the conviction. Brzek's story was confused, illiterate and frequently unintelligible, as when he quoted the petitioner as saying (R. 462), "the bloodshed end, the bloodshed, it wouldn't be by, say, shooting firearms, to be by a more quiet method." It is by no means clear that the prospective conflict which was the alleged subject of the petitioner's remarks would involve the government. For, immediately before mentioning "the bloodshed end," Brzek quoted the petitioner as saying (R. 461) that Communists would be needed "wherever *these strikes* would occur."

In any event, whatever the nature of the conflict about which the petitioner is supposed to have spoken or the identity of the participants, it appears from Brzek's testimony that far from advocating violence, the petitioner urged its avoidance. Thus, the witness quoted the petitioner as saying that "we would approach this to avoid blood-

shed," and again "we will try to avoid bloodshed and we will approach it to avoid bloodshed" (R. 461-62). The additional alleged comment (R. 462), "However, we will not be pushed off. If we have to spill blood we will," indicates that, at most, petitioner warned of the possibility of a reluctant resort to force if necessary for self-defense.

While the Court below referred to the Brzek testimony in discussing petitioner's intent (R. 626),[19] its decision that the evidence established guilty knowledge rests entirely on a theory of guilt by imputation.

The Court's theory starts with the premise that, "The Party taught that to reach the goal of the 'Proletarian Revolution and the Dictatorship of the Proletariat,' actual class revolt would be necessary, and violence and bloodshed inevitably would result" (R. 622). The opinion does not and cannot support this conclusion with evidence of any declaration to that effect by the Communist Party or one of its officers or members, either before or during the statutory three-year period. The reasoning on which the conclusion is based appears to be the following: (1) The excerpts in evidence from the "classical" writings of Marx, Engels, Lenin and Stalin, as the Court construed them, "advocated the violent overthrow of capitalist governments as speedily as circumstances would permit" (R. 625). (2) Since such advocacy appears in the "classical" literature, it is a permanent and immutable dogma of Marxism-Leninism, applicable to all capitalist governments, including the United States, under all circumstances. (3) Since the Communist Party acknowledged its adherence to the principles of Marxism-Leninism (R. 622), current advocacy of the violent overthrow of the United States government may therefore be imputed to it.

---

[19] It distorts the significance of this testimony by divorcing the petitioner's supposed comment, "if we have to spill blood we will", from the context in which it allegedly was made.

The Court below then found that petitioner was an active member and officer of the Communist Party, was familiar with the "classical" literature, urged its study, and taught in Communist Party schools. From these bare facts, it imputed to petitioner knowledge of the teaching and advocacy which it had imputed to the Communist Party (R. 624-25).

The theory of guilt relied on by the Court below flies in the face of the evidence.

The Court indulged in a tenuous series of inferences to conclude that the Communist Party advocated the violent overthrow of the government. But it completely ignored the direct evidence on the subject, all of which refutes its conclusion.

The opinion (R. 622) paraphrases Lautner's testimony on direct examination that the "final aim" of the Communist Party "is the destruction of the existing social order known as imperialism * * * and its governments, and instituting instead through the proletarian revolution and the dictatorship of the proletariat, socialism" (R. 211). This statement of the objective of the Communist Party is entirely consistent with the advocacy of a peaceful path to socialism. For, as the trial court instructed the jury (R. 583) the words "revolution" and "destruction" do not imply the use of force or violence.[20] Moreover, the opinion disregards the fact that any ambiguity in Lautner's direct testimony was disspelled on cross-examination when the witness testified as follows (R. 281):

> "Q. Was it not also the position of the Communist Party [from 1945 to 1950] Mr. Witness, that if socialism could not be peacefully established in the United States by elections and parliamentary methods, the reason would be that the trusts and monop-

---

[20] "Revolution" is defined as "a radical change in social or government conditions". Webster, *New International Dictionary*. And the Smith Act itself speaks of the "destruction of any such government *by force or violence*". (Emphasis supplied.)

olies would try to prevent this by force and violence? A. That is what the Communist Party said, yes."

Thus the "expert" for the prosecution unequivocally stated that the Communist Party advocated the transition to socialism in the United States by peaceful and democratic means.

The Court below also ignored the only two statements in evidence by the Communist Party, its officers or members, concerning the methods for the achievement of socialism in this country.

First, the current constitution of the Communist Party, introduced by the prosecution, recites in a preamble that the organization "upholds the achievements of American democracy and defends the United States Constitution and its Bill of Rights against its reactionary enemies who would destroy democracy and popular liberties." It states that, among the purposes of the organization, is "the establishment of socialism by the free choice of a majority of the American people." Furthermore, it specifically provides for the expulsion of any member "who advocates force and violence or terrorism, or who adheres to or participates in the activities of any group or party which conspires or acts to subvert or undermine, weaken or overthrow any or all institutions of American democracy through which the majority of the American people can maintain their right to determine their destinies." (G. Ex. 45; R. 479-80.)

Second, as we have seen (*supra*, p. 17), the fact that the Communist Party advocated a peaceful path to socialism in the United States is also established by William Z. Foster's authoritative *History of the Communist Party of the United States*, published in 1952 (D. Ex. 3; R. 476-79).

The prosecution offered no evidence to contradict the unequivocal statements contained in the constitution and the Foster book or that those statements were not intended to mean and were not understood by the petitioner and

other Communists to mean exactly what they say. On the contrary, as we have shown, the testimony of the prosecution's own "expert" fully corroborated this documentary evidence.

Thus the record refutes the inference, drawn by the Court below from its reading of the "classical" literature, that the Communist Party advocated violent overthrow. In fact, the evidence proves the contrary and thereby establishes petitioner's innocence.[21]

But even if the inferences indulged in below were not belied by the evidence, they would nevertheless be completely unwarranted.

The issue concerning the excerpts from the "classical" literature is not whether a court or jury could reasonably interpret them as advocating the violent overthrow of capitalist governments. The issue is whether the Communist Party, to petitioner's knowledge, so interpreted them and taught and advocated that this interpretation was currently applicable to the government of the United States. *Schneiderman* v. *United States*, 320 U. S. 118, 153-54. Yet there is no evidence whatsoever that the Communist Party or petitioner understood the "classics" to advocate violence. Nor is there any evidence as to what the Communist Party or the petitioner taught concerning

---

[21] The opinion below states (R. 624) that other courts have held "that evidence substantially the same to that appearing in the record before us" warranted a finding that the Communist Party advocated violent revolution. It cites *United States* v. *Dennis*, 183 F. 2d 201; *Frankfeld* v. *United States*, 198 F. 2d 679; *United States* v. *Mesarosh*, *supra*, and *Scales* v. *United States*, *supra*. We believe it unnecessary to discuss the accuracy of this statement or the validity of the findings made on the evidence introduced in the cases relied on by the court below. The *Mesarosh* and *Scales* cases will be reviewed by the Court at this term. And of course, for the purposes of this case, the nature of the advocacy of the Communist Party must be determined exclusively on the record made here. As as have shown, the uncontradicted evidence in *this* record establishes that such advocacy was innocent.

the current application to the United States of these political polemics of German and Russian Communists, written a quarter of a century to a century ago. In the absence of such evidence, the fact that the Communist Party and petitioner recommended study of the literature, used it in class room teaching and avowed their adherence to the principles of Marxism-Leninism does not have the slightest tendency to prove that the Communist Party advocated proscribed doctrine, much less that petitioner had knowledge that it did so.

In *Schneiderman* v. *United States*, *supra*, the government relied on the same excerpts from the works of Marx, Engels, Lenin and Stalin which are in evidence here.[22] In holding that the excerpts failed to establish that Schneiderman or the Communist Party advocated violent overthrow, the Court said (at 154-55):

> "In the first place this phase of the government's case is subject to the admitted infirmities of proof by imputation. The difficulties of this method of proof are here increased by the fact that there is, unfortunately, no absolutely accurate test of what a political party's principles are. Political writings are often over-exaggerated polemics bearing the imprint of the period and the place in which written. Philosophies cannot generally be studies in vacuo. Meaning may be wholly distorted by lifting sentences out of context, instead of construing them as part of an organic whole.[23] Every utterance of party

---

[22] The *Manifesto*, Lenin's *State and Revolution* and *Left Wing Communism*, and Stalin's *Foundations of Leninism*, cited under its original title, *The Theory and Practice of Leninism*. Most of the excerpts relied upon by the prosecution here are quoted in the opinion, at 149-53.

[23] Cf. the remarks of Thomas Erskine in an early seditious libel case: "The greatest works upon government the most excellent books of science, the sacred Scriptures themselves, might be distorted into libels, by forsaking the general context and hanging a meaning upon selected parts." *Rex* v. *Stockdale*, 22 How. St. Tr. 257.

leaders is not party gospel. And we would deny our experience as men if we did not recognize that official party programs are unfortunately often opportunistic devices as much honored in the breach as in the observance."

As the evidence shows, Communists agree with the Court's strictures against a dogmatic reading of political writings or their mechanical application to situations outside of the historical context in which they were written. Even the prosecution's "expert", Lautner, testified that the Communist Party taught that the practical application of the principles of Marxism-Leninism is always dependent upon the conditions existing at the time and place in question and hence that no passage from the literature is applicable to all situations (R. 277-79). *The Communist Manifesto* and the *History of the Communist Party of the Soviet Union* reiterate and amplify the same warning (see *supra*, pp. 16-17).

The petitioner shares this view of Marxism-Leninism. "It enables us to perceive the direction in which things are heading", he wrote. "It does not, nor can it determine, for us beforehand, the form nor the exact time of a new social development" (R. 475).[24]

Accordingly, even if the writings of Marx and Engels in 1848 and those of Lenin and Stalin in the first quarter of this century clearly and unequivocally advocated violent overthrow as the prerequisite for the establishment of socialism under then prevailing conditions, the imputation

[24] For a recent illustration of the evolutionary character of Marxist thought, see the statements of N. Krushchev, in his report to the 20th Congress of the Communist Party of the Soviet Union concerning the non-inevitability of war and the possibility of achieving the transition to socialism by parliamentary means (New York Times, February 15, 1956). As the evidence here establishes, the American Communist Party anticipated Krushchev in advancing the latter proposition, and applied it specifically to the United States (D. Ex. 3; R. 476-79).

of such advocacy to the Communist Party and knowledge of it to the petitioner during the indictment period would still be wholly unwarranted. In fact, however, the "classical" writings are susceptible of an innocent interpretation. As the Court in *Schneiderman* concluded (at 157) after a review of the excerpts relied upon below and others of a more inflammatory nature:

> "A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open."

The Court, of course, did not have before it the Lautner testimony, the current constitution of the organization and *Foster's History*, all of which, as we have shown, affirmatively establish that the Communist Party advocated a peaceful path to socialism in this country. But if this evidence were ignored, the most that could be said of the Communist Party's use of the "classical" literature and its adherence to Marxism-Leninism would be that they are susceptible of two interpretations, the one innocent and the other reprehensible. Under these circumstances, as *Schneiderman* held (at 158-59) the courts are not justified in "imputing the reprehensible interpretation to a member of the organization in the absence of overt acts indicating that such was his interpretation." The court below cited no such overt acts by the petitioner, and there were none.

Finally, a reversal would be required even if the evidence could somehow be taken to establish that the Communist Party's acknowledged adherence to Marxism-

Leninism committed it, to the knowledge of petitioner, to the achievement of its ultimate revolutionary goal by violent means. For proof of an essential element of the offense would still be lacking. As the trial court instructed the jury (R. 581-82), the Smith Act does not denounce advocacy designed to induce discussion of or belief in the violent overthrow of the government but is confined to advocacy calculated to incite persons to violence. See *Dennis* v. *United States*, 341 U. S. 494, 502, 511-12.

Accordingly, it would not have been sufficient had the prosecution proved that, to petitioner's knowledge, the Communist Party advocated the necessity for violent revolution as a matter of political theory. What was required was proof that petitioner knew the Communist Party to have been engaged in incitements to violence. Yet there is not a scintilla of evidence which bears on this element of the offense. Petitioner does not dispute that, to his knowledge, the Communist Party recommended the study and discussion of the writings of Marx, Engels, Lenin and Stalin. But study and discussion of these political tracts, written by foreign Communists in bygone times, however their teaching may be interpreted, is a far cry from current incitements to the violent overthrow of our government "as speedily as circumstances will permit".[25] The court below made no attempt to bridge this gap, but simply ignored the fact that incitement is an element of the offense.

B. Intent

The indictment charges (R. 3) that the petitioner had the specific intent "to bring about such overthrow [of the government of the United States] by force and violence as

[25] An "incitement" to take action at some vague and presently unascertainable future date would itself appear to be a contradiction in terms, since the essential element of incitement is the immediate link between the words used and the action which they are designed to instigate.

speedily as circumstances would permit." Accordingly, the prosecution was required to establish that petitioner's membership in the Communist Party was not only accompanied by knowledge of its alleged teaching and advocacy, but also by his deliberate and specific purpose to bring about the evil apprehended by Congress. Cf. *Hartzell* v. *United States*, 322 U. S. 680, 686.

Each of the two elements of the crime charged stands on its own footing. Proof of the former does not establish the latter. Membership in an organization with knowledge that it has an illicit purpose does not establish that the member intended to effectuate that purpose. As the Supreme Court held in *Schneiderman* v. *United States*, *supra*, at 136:

> "* * * * under our traditions beliefs are personal and not a matter of mere association, and that men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms and asserted principles."

To the same effect, see *Knauer* v. *United States*, 328 U. S. 654, 669; *Baumgartner* v. *United States*, 322 U. S. 665; *United States* v. *Hauck*, 155 F. 2d 141, 144.

Accordingly, the specific intent charged in the indictment could not be imputed to a member of the Communist Party from the fact—if established—that he had knowledge that the organization taught and advocated proscribed doctrine. Intent must be proved by further evidence which establishes that the member joined the organization for the purpose of effectuating the forbidden objective.

The reasons for this requirement are particularly compelling in the circumstances of this case where the alleged seditious purpose of the organization is said to be couched as an ultimate goal to be achieved at some unascertained time in the remote future, while its day-to-day policies and activities are responsive to legitimate and pressing popular demands for reform. It would be blindness to deny that

individuals may be attracted to and join such an organization because of its immediate program although they do not share its belief in the need for an ultimate revolutionary solution of their social and economic problems.

Petitioner's intent could, of course, be proved only by his own acts and declarations. There was no such proof here. We have already reviewed every item of evidence touching his conduct. His speeches, teaching, conversations and writings over a twenty-year period are devoid of advocacy of violence for any purpose, much less for the purpose of overthrowing the government. True, he has been highly critical of many aspects of the foreign and domestic policies of the national administration, has expressed his admiration of the Soviet Union, and has stated his belief in the ultimate establishment of socialism in the United States. However unpopular or even repugnant some of his views may be in present day America and however intemperate this Court may consider some of his remarks, they do not so much as suggest an intention to resort to violence. Cf. *Hartzell* v. *United States*, *supra*, at 687 in which the Court reversed a conviction for lack of proof of the requisite specific intent on evidence far more cogent than anything in the present record.

The court below nevertheless held that guilty intent had been proved. It relied primarily on the same factors which it found established guilty knowledge: petitioner's many years of active membership in and devotion to the Communist Party, and his familiarity with its supposedly severe inner-party discipline (R. 625-26). Exactly the same factors were rejected by the Court in *Schneiderman* (at 147) as proof that a Communist Party member believed in political violence. The only additional matter relied on by the court below was a sentence, taken out of context, from the statement attributed to petitioner by Brzek (R. 626). As we have seen, however, that statement—if made—was entirely consistent with innocence (*supra*, pp. 33-34).

This case presents, in its most exaggerated form, the question whether Communist defendants in Smith Act prosecutions are to enjoy the benefit of accepted and constitutionally protected standards governing proof of guilt. Whatever the personal views of jurors and judges concerning the purposes of the Communist Party and its members and whatever the findings of courts in other Smith Act cases on different records, the petitioner was entitled to be adjudged solely on the record in *this* case. That record is devoid of evidence of guilty knowledge or intent. Moreover, it establishes by uncontradicted evidence which is conclusive for the purpose of this proceeding that the Communist Party advocated a peaceful path to socialism in the United States. It therefore affirmatively demonstrates that petitioner is innocent. The court below sustained the conviction only by ignoring the evidence exonerating the petitioner, and disregarding the presumption of innocence, the principle that guilt is personal, the constitutional protection accorded association and expression [26] and the provision of section 4(f) of the Internal Security Act that the holding of office or membership in a Communist organization shall not *per se* constitute a violation of any criminal statute.[27]

The conviction should therefore be reversed with directions to enter a judgment of acquittal.

II. The membership clause of the Smith Act is unconstitutional on its face and as applied by the Court below.

This case and *Scales* v. *United States, supra*, present for the first time the question of the constitutionality of the

---

[26] We later show (*infra*, p. 56) that in addition to all of its other deficiencies, the evidence wholly fails to satisfy the clear and present danger test.

[27] We later argue (*infra*, p. 76) that section 4(f) not only requires a reversal of the conviction but was a bar to the indictment.

membership clause of the Smith Act. It is therefore necessary, at the outset, to note the differences between that clause and the provisions of the Smith Act which were involved in *Dennis* v. *United States, supra.*

The advocacy and organizing provisions of the Act, sustained in *Dennis*, prohibit the teaching or advocacy of the violent overthrow of the government and the organization of a society of persons who so teach and advocate. They punish individuals for their own acts or advocacy. The membership clause, on the other hand, does not penalize the accused for his advocacy but because of the advocacy of other members of the organization to which he belongs. It does not require proof that the accused participated in or helped to promote the proscribed advocacy or engaged in any overt act beyond that of joining the organization. He may be found guilty although he is a passive member who attends no meetings and engages in no advocacy or organizational activity of any kind. Proof of his membership and knowledge that other members advocate seditious doctrine are alone sufficient to convict him.

Thus it is not advocacy but association that the membership clause makes criminal.

The court below, failing to consider the differences between the provisions of the Smith Act involved here and in *Dennis*, holds that *Dennis* is decisive of the validity of the membership clause (R. 630-32). This is plainly not the case. On the contrary, under the rationale of the *Dennis* decision, the membership clause is unconstitutional on its face and as applied in this proceeding.

A. The Omission of Intent as an Element of the Offense

The membership clause contains no reference to the intent of an accused in becoming and remaining a member of the organization. Membership and knowledge that the proscribed doctrine is advocated by other members are the only elements of the offense. Construed in accordance with

its text, the statute authorizes the conviction of one who does not believe in violent revolution under any circumstances, but who joined the organization for some other and entirely legitimate purpose. So construed, the clause plainly violates due process as well as the First Amendment. *Dennis* v. *United States, supra, at* 515-16; *Adler* v. *Board of Education*, 342 U. S. 485, 494-96.[28]

The indictment seeks to remedy the defect in the text of the statute by charging petitioner with "intending to bring about such overthrow by force and violence as speedily as circumstances would permit" (R. 3). But the importation of a specific intent into the membership clause is wholly unwarranted. It is based on a fallacious application of the *Dennis* decision.

Dennis held that a specific intent to overthrow the government by violence was an unexpressed but necessarily implied element of the crimes defined in the advocacy and organizing provisions of the Smith Act. The Court gave the following reason for this conclusion (at 499):

> "The structure and purpose of the statute demand the inclusion of intent as an element of the crime. Congress was concerned with those who *advocate* and *organize* for the overthrow of the government. Certainly those who recruit and combine *for the purpose of advocating overthrow* intend to bring about overthrow." (Emphasis supplied.)

Thus the Court read a specific intent into the provisions of the statute then under consideration because of the obvious connection between advocacy of or organization for violent revolution and the intention to bring it about. Judge Hand

---

[28] In the *Adler* case the Court sustained the New York Feinberg Law only because the statute did not make membership by a teacher in an organization which, to his knowledge, advocated violent revolution a conclusive disqualification to teach in the public schools, but afforded him a hearing in which he could rebut the inference of disqualification arising from such membership and knowledge.

put the same thought as follows (*United States* v. *Dennis*, 183 F. 2d 201, 214-15):

> "Obviously one cannot teach or advocate the use of violence without specifically intending to bring about its use; *a fortiori* must that be true if one organizes a group so to teach. * * * the sections carry their own specific intent."

The nexus between act and intent which was the foundation for the result in *Dennis* is wholly lacking here. It cannot rationally be said that because a person joins an organization knowing it to advocate violent overthrow, he must intend to effectuate that purpose. He may have joined for an entirely different purpose, e.g., to effectuate other and concededly legitimate policies of the organization, to reform it, or even to gather evidence for a Smith Act prosecution. As the Court said in the *Schneiderman* case, *supra*, at 136, "men in adhering to a political party or other organization notoriously do not subscribe unqualifiedly to all of its platforms or asserted principles." It is for this reason, as we have seen, that the Court has refused to impute seditious intent to a member of an organization by virtue of his membership and knowledge that the organization has a seditious purpose. *Schneiderman* v. *United States*, *Knauer* v. *United States*, *Baumgartner* v. *United States*, all *supra*.[29]

Thus the reasoning which impelled the Court to read intent into the advocacy and organizing provisions of the statute is inapplicable to the membership clause. Moreover, the Smith Act itself appears to recognize the distinction between overt acts which can be said to carry their own specific intent and those which cannot. For while intent is omitted from the text of the advocacy and organizing provisions, it is included in the second paragraph of section

---

[29] We have shown (*supra*, p. 42) that the reasons for rejecting such an inference are particularly compelling in the circumstances of this case.

2385 as an element of the offense of publishing or circulating literature that advocates violent overthrow. Plainly, Congress recognized that seditious intent cannot be inferred from the overt acts to which this provision is addressed. Further, the second paragraph of section 2385, while specifying intent, omits knowledge of the content of the literature as an element of the offense, apparently because Congress recognized that proof of intent carries with it an inference of such knowledge. The fact that the membership clause, in contrast, focuses on knowledge (from which intent cannot be inferred) to the exclusion of intent indicates that the omission of the latter was deliberate. In any event, as we have shown, there is no basis for reading an intent requirement into the clause, and without it the clause is unconstitutional.[30]

B. The Imputation of Guilt Solely by Reason of Association

Even if the membership clause could be said to import intent as an element of the offense, it would nevertheless be unconstitutional for imputing guilt from association, unaccompanied by any overt act of wrong-doing.

"Guilt with us remains individual and personal, even as respects conspiracies." *Kotteakos* v. *United States*, 328 U. S. 750, 772. See also, *Bridges* v. *Wixon*, 326 U. S. 135, 163; *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, 178-79.[31] As a number of distinguished com-

---

[30] The court below and the court in the *Scales* case, *supra*, sustained the statute without discussing the omission of intent as an element of the offense.

[31] Cf. the statement of Charles Evans Hughes in opposing the expulsion of the Socialist members of the New York State Assembly in 1920: "* * * it is of the essence of the institutions of liberty that it be recognized that guilt is personal and cannot be attributed to the holding of opinion or to mere intent in the absence of overt acts; * * *." Quoted in *Schneiderman* v. *United States*, *supra*, at 154. The full text of the statement appears in Waldman, *Albany: The Crisis in Government* (1920), pp. 55-59.

mentators have noted, the membership clause represents the first Congressional attempt in the history of the nation to apply the "abhorrent" doctrine of guilt by association to citizens.[32]

The Court has twice invalidated state syndicalism laws under which the accused were convicted for membership in the Communist Party, unaccompanied by any illegal act or illicit advocacy on their part.

In *DeJonge* v. *Oregon*, 299 U. S. 353, the defendant was indicted and convicted under a state statute which made it a criminal offense to preside at or assist in conducting an assemblage of persons which teaches or advocates violence as a means of accomplishing industrial or political change.

---

[32] "This idea that guilt is not necessarily personal, but can result from association, is absolutely abhorrent to every American tradition or conception of criminal justice before 1918. Unfortunately, in that hysterical period it got into our deportation statutes and state syndicalism acts; but the operation of both kinds of laws is not a cause for pride, and might well have deterred Congress from passing this part of section 2 [the membership clause]. It is the first time that guilt by association was ever introduced into a federal criminal law. Neither the Sedition Act of 1798 nor the Espionage Acts of 1917 and 1918 included such a conception. We got safely through the Civil War and the World War without finding it necessary to create group guilt outside the limits of an actual conspiracy." Chafee, *Free Speech in the United States* (1954), p. 470. For a detailed critique of the membership clause, see the same volume at 470-84. "Whatever its [the Smith Act's] merits otherwise, Congress had now for the first time made 'membership' or 'affiliation with' certain organizations a criminal offense. Abhorrent for generations and imported from the Immigration Act of 1918, 'guilt by association' became part of the law applicable to citizens". O'Brian, *New Encroachments on Freedom*, 66 Har. L. Rev. 1, 18. Guilt by association "appeared in our law only in 1940; since then it has grown and spread until this cloud, no larger than a man's hand, covers the whole horizon." Commager, *The Pragmatic Necessity for Freedom*, in *Civil Liberties Under Attack* (1951), p. 17. See also, Acheson, *A Democrat Looks at His Party* (1955), pp. 172-73; Biddle, *The Fear of Freedom* (1951), pp. 92, 105-06.

The facts, as found by the state court, were that the Communist Party advocated the violent overthrow of the government; that the defendant was a member of the organization, spoke in its name at a meeting held under its auspices, and urged those present to recruit members and to purchase Communist Party literature. There was no proof, however, that the defendant or the other speakers engaged in any advocacy of force or violence.

The Court reversed the conviction. It held that a person cannot constitutionally be convicted of crime for participation in a peaceable assembly under the auspices of the Communist Party, even if it is assumed that the organization advocates doctrines of force and violence. In reaching this conclusion the Court said (pp. 365-66):

> "We are not called upon to review the findings of the State Court as to the objectives of the Communist Party. Notwithstanding those objectives, the defendant still enjoyed his personal right of free speech and to take part in a peaceable assembly having a lawful purpose, although called by that Party. The defendant was none the less entitled to discuss the public issues of the day and thus in a lawful manner, without incitement to violence or crime, to seek redress of alleged grievances. That was of the essence of his guaranteed personal liberty."

In the *DeJonge* case, much more was shown as to the defendant's activities in relation to the Communist Party than is required under the membership clause of the Smith Act. DeJonge spoke at a meeting. He solicited membership. He urged the purchase of literature. Nevertheless, the Court held that the conviction violated the guarantees of the First Amendment (as incorporated into the Fourteenth) since it was secured without proof that the accused personally advocated proscribed doctrine or committed any other overt act of a criminal nature.

The Court emphasized (at 365) that the question under the Constitution is whether the defendant's "utterances

transcend the bounds of freedom of speech which the Constitution protects." The membership clause of the Smith Act, however, does not require proof of any utterances by the accused. Clearly the knowledge requirement of the Act and the intent alleged in the indictment (if the latter is an element of the offense) do not render the statute constitutional. For the *DeJonge* case was decided without reference to knowledge or intent, the Court holding flatly that a person cannot constitutionally be subjected to a criminal penalty because of his organizational association, if he has committed no criminal acts and has engaged in no advocacy that lies outside of the protection of the First Amendment.

In *Herndon* v. *Lowry*, 301 U. S. 242, the accused was convicted of an offense which the Court described as follows (at 260):

> "In its application, the offense made criminal is that of soliciting members for a political party and conducting meetings of a local unit of the party when one of the doctrines of the party, established by reference to a document not shown to have been exhibited to anyone by the accused, may be said to be ultimate resort to violence at some indefinite future time against organized government."

As in the *DeJonge* case, the defendant was not merely a passive member of the Communist Party, but an active, paid organizer who solicited membership. Moreover, he was shown to have knowledge of the organization's alleged seditious advocacy since he had in his possession a document issued by the organization which the Court found could be said to contain such advocacy.

Nevertheless, the Court held that the conviction violated the Constitution because the crime charged did not involve acts of incitement to insurrection or advocacy of violence on the part of the defendant. In reaching this conclusion, the Court said (at 261):

> "The only objectives appellant is proved to have urged are those having to do with unemployment and emergency relief which are void of criminality. His membership in the Communist Party and his solicitation of a few members wholly fail to establish an attempt to incite others to insurrection. * * * In these circumstances, to make membership in the Party and solicitation of members for that Party a criminal offense, punishable by death, in the discretion of a jury,[32a] is an unwarranted invasion of the right of freedom of speech."

The Court took occasion to restate the doctrine of the *DeJonge* and *Herndon* cases in *American Communications Association* v. *Douds,* 339 U. S. 382, in words which can leave little doubt as to the unconstitutionality of the membership clause. Although that decision sustained section 9(h) of the Taft-Hartley Law, it did so only on the premise that the non-Communist affidavits required of trade union officers did not substantially infringe the right of individuals to belong to the Communist Party and to participate in its peaceable advocacy.

Unlike section 9(h), the membership clause, in the words of the majority opinion in *Douds* (at 402), *is* "frankly aimed at the suppression of dangerous ideas." It *does* "restrain the activities of the Communist Party as a political organization" and "attempts to stifle beliefs" (at 404). It *does* proceed against "the groups or beliefs identified therein" rather than against "the combination of those affiliations and beliefs with occupancy of a position of great power" (at 403-04). It does *not* touch "only a relative handful of persons, leaving the great majority of persons of the identified affiliations and beliefs completely free from restraint" (at 404). On the contrary, it pun-

---

[32a] While the membership clause does not go this far, conviction under it now entails forfeiture of citizenship together with a possible twenty year sentence and deprivation of social security benefits. See ftn. 3, *supra.*

ished every person of "the identified affiliations and beliefs." The restraint imposed is not merely a "possible loss of position" in trade unions (*ibid.*), but a prison sentence of up to ten years. In the words of Mr. Justice Jackson's opinion (at 434), the membership clause *does* "suppress or outlaw the Communist Party" and prohibits "its members from engaging in any above-board political activity normal in party struggles under our political system." And it *does* prohibit an individual from being or becoming "a full-fledged member of the Party."

Thus, the opinions in *Douds* plainly foreshadow the invalidity of the membership clause. For the latter contains all of the vices which, if present in 9(h), would have rendered that section unconstitutional.

The opinion below ignores the foregoing decisions. It states (R. 629):

> "Had the defendant confined his advocacy and teaching for a change in our form of government within the limits of constitutional processes, he would clearly have been protected by the First Amendment."

Thus the court decided the case as though it had arisen under the advocacy provisions of the Smith Act, disregarding the fact that the offense defined in the membership clause does not involve advocacy by the accused but rests solely on association.[33]

The court below also expressed agreement with the opinion in the *Scales* case, supra, sustaining the constitutionality of the membership clause. The Court in *Scales*, like the court below, failed to consider *DeJonge*, *Herndon* and *Douds*. Instead, it avoided the impact of these cases by rewriting the membership clause. The *Scales* decision converts the statute into one that punishes conspiracies to overthrow the

---

[33] Moreover, as we have shown (*supra*, p. 32) there was no evidence that petitioner had ever advocated violence.

government (227 F. 2d 581, 586, 588). By eliminating advocacy from the statute, the court dispensed with the embarrassing necessity of considering the effect of the First Amendment. By importing conspiracy into the statute, the court was able to by-pass the problem of guilt by association and to equate the case with the conspiracy considered in *Dennis*. Plainly, there is no warrant in the membership clause for either of these steps. Petitioner was not charged with conspiracy but with the substantive offense of membership. The gravamen of the indictment is not an agreement to overthrow the government but association with others who *advocate* overthrow.[34] Moreover, a reversal would be necessary even if the membership clause were susceptible of the interpretation which the court gave it. For if the court is right, petitioner was convicted of a crime with which he was not charged, for which he was not tried, and which was not proved against him. *Cole* v. *Arkansas*, 333 U. S. 196.

C. The Absence of a Clear and Present Danger

On its face and as applied below, the membership clause fails to satisfy the clear and present danger test as formulated and employed in *Dennis* v. *United States, supra.*

1. Face Invalidity.

The *Dennis* case marks the outermost limit of the Court's sanction of an abridgement of rights within the area guarded by the First Amendment. The Court there held that a conspiracy on the part of the leaders of the Communist Party to violate the advocacy and organizing provisions of the Smith Act, when engaged in in the context of the tense international situation existing at the date of the indictment, gave rise to a clear and present danger of

[34] Under the *Scales* decision, the membership clause simply duplicates 18 U. S. C. 2384 which punishes conspiracies to overthrow the government.

the violent overthrow of the government, the "substantive evil" that the Act was designed to prevent.

The conduct involved in *Dennis* was of an entirely different order from that prohibited by the membership clause. The defendants in that case were convicted of conspiring (1) to organize as the Communist Party a society of persons who teach and advocate the violent overthrow of government and (2) knowingly and wilfully to advocate such violent overthrow. The Court found (p. 511) that this conspiracy was "highly organized * * * with rigidly disciplined members subject to call when the leaders, these petitioners, felt that the time had come for action." The Court emphasized (*ibid.*) "It is the existence of the conspiracy which creates the danger." [35]

The membership clause presents an entirely different situation. It does not involve the element of conspiracy, so that the factor which the Court held "creates the danger" is utterly lacking. It does not require proof that the accused was a leading member of the organization or that he engaged or planned to engage in any advocacy or organizational activity whatsoever. Indeed, the clause would be superfluous if it applied only to members who advocated the proscribed doctrine or were active in organizing persons to engage in such advocacy. For conduct of this character is prohibited by the advocacy and organizing provisions of the Act. Thus the thrust of the clause is against members who are completely passive or whose activity is confined to legitimate advocacy.

But the membership of individuals whose activity is so confined cannot constitute a danger to the government of the United States under any circumstances. The fact that the accused has knowledge that other members engage in

---

[35] Mr. Justice Jackson's concurring opinion (at 570) rested entirely on the fact that the indictment was for conspiracy. And Mr. Justice Frankfurter (at 542) gave heavy emphasis to the conspiracy factor.

proscribed advocacy or that he intends to bring about the violent overthrow of the government (if such intent can be imported into the statute) in no wise increases the "danger" in the absence of any overt conduct beyond the bare act of association.

The Court emphasized in *Dennis* (at 516) that under the advocacy and organizing provisions of the Smith Act:

> "When there is doubt as to the *intent of the defendants, the nature of their activities or their power to bring about the evil,* this Court will review the convictions with the scrupulous care demanded by Constitution." (Emphasis supplied.)

The membership clause, however, authorizes the conviction of an accused who engages in no "activity" whatsoever and who is powerless "to bring about the evil." Moreover, as we have shown, it does not even require proof of seditious intent on the part of the accused. Thus, none of the constitutional requisites for a conviction under the advocacy and organizing provisions of the Smith Act is an element of the offense created by the membership clause. Accordingly, under the standards laid down in *Dennis,* that clause is unconstitutional on its face.

2. Application.

Even if it were to be held that the membership clause does not contravene the clear and present danger requirement on its face, the application of the statute in this case was unconstitutional.

A finding that a clear and present danger exists under the facts of a particular case involves consideration of two factors: (1) the nature of the defendant's activities, and (2) the circumstances under which these activities were engaged in. As applied to a Smith Act case by the majority in *Dennis,* the issue is whether the conduct of the defendant as established by the evidence, in the light of the interna-

tional situation existing at the time of the indictment, gave rise to a clear and present danger of the violent overthrow of the government. Thus the Court held (at 511) that it was the combination of what it characterized as the "highly organized conspiracy" formed by the defendants "coupled with the inflammable nature of world conditions, similar uprisings in other countries, and the touch-and-go nature of our relations with other countries with whom petitioners were in the very least ideologically attuned" that created the danger.

In the present case, the evidence as to the petitioner's activities during the three year statutory period preceding the indictment, and the state of our foreign relations at the time the indictment was returned, establish that the finding below as to the existence of a clear and present danger was palpably erroneous.[36]

The evidence as to petitioner's activities during the three years preceding the return of the indictment showed that he had been a member and officer of the Communist Party, had spoken at three meetings and had written two articles for the *Party Forum*, a publication of the Communist Party of Illinois (Appendix B, *infra* pp. 97-98; G. Ex. 59, 66, R. 379-80). As we have seen (*supra*, p. 32) these speeches and articles contained nothing but legitimate political advocacy. Under no circumstances could they be even remotely "dangerous."[37] Thus, there is no evidence of conduct by petitioner of the character relied on in the *Dennis* case.

Moreover, as we have seen, the Court did not hold that the conduct of the *Dennis* defendants would give rise to a

---

[36] The finding of the trial judge on this issue was implicit in his submission of the case to the jury and was affirmed by the court below (R. 631-32).

[37] As the record establishes, the petitioner's activities prior to the three years preceding the indictment were similarly devoid of "danger".

clear and present danger under all circumstances. It held only that their conduct created such a danger when engaged in the context of "the inflammable nature of world conditions" found to have existed at the time of the indictment. The Court of Appeals in *United States* v. *Dennis*, 183 F. 2d 201, 213, stated the issue as follows:

> "We need not say that even so thoroughly planned and so extensive a confederation would be a 'present danger' at all times and in all circumstances; the question is how imminent: that is how probable of execution—it was in the summer of 1948, when the indictment was found."

After posing this question, the court found that in the summer of 1948 (*ibid.*):

> "Any border fray, any diplomatic incident, any difference in the construction of the *modus vivendi*—such as the Berlin blockade we have just mentioned—might prove a tinder box, and lead to war." [38]

The international setting in May 1954, the date of the indictment in this case, was materially different from that of 1948-1951 on the basis of which the *Dennis* conviction was affirmed.

The Korean truce took effect in July 1953. By 1954, a marked relaxation of international tensions had occurred, leading to the Geneva conference in the spring of that year

---

[38] In *United States* v. *Flynn*, 216 F. 2d 354, 367, the court held that the danger found in the *Dennis* case had not abated by the summer of 1951, the date of the *Flynn* indictment, "when the Korean conflict was raging and our relations with the Communist world had moved from cold to hot war." The indictments in *United States* v. *Mesarosh*, and *Yates* v. *United States*, *supra*, were likewise returned during the period of the Korean war. It is significant in this connection that the evidence as to the petitioner's activities during the Korean war shows that his primary concern was with the advocacy of a cease-fire (G. Exs. 59, 66).

and the establishment of peace in Indo-China. In October, 1954, the President stated (*N. Y. Times*, October 21, 1954):

> "For the first time in twenty years, there has been for some months no active battlefield anywhere in the world. Moreover, while fighting has been brought to a halt during the past twenty-one months, still other developments favorable to the maintenance of peace have been brought about through understanding and through persistent and patient work, in which your government has been a helpful participant."

In his State of the Union Message on January 5, 1955, five days before the trial of this case began, the President was able to report (*N. Y. Times*, Jan. 6, 1955):

> "There has been progress justifying hope for continuing peace and for the ultimate rule of freedom and justice."

The progress to which the President referred made possible the "summit" conference at Geneva, accompanied by the further relaxation of tensions and recession of the danger of war. Thus, the background factors whose presence *Dennis* held essential to the constitutional application of the advocacy and organizing provisions of the Act were no longer in existence at the time the indictment here was returned. Cf. *Chastleton Corporation* v. *Sinclair*, 264 U. S. 543.

The majority in *Dennis* (at 510) weighed "the gravity of the 'evil' discounted by its improbability" against the values inherent in the guarantees of the First Amendment. It held that the threat to the nation from the conduct of the defendants at a time when war seemed imminent tipped the balance in favor of security as against individual liberty.

The present case requires a different weighting. On the one hand, the danger of the effectuation of the "evil"

from the activities of the petitioner, as disclosed by the evidence, is so remote as to be altogether improbable under any circumstances, and particularly so in the setting of the new and improved international situation since 1954. On the other hand, greater weight must be given to the preservation of our democratic freedoms, now that the conflict between the capitalist and socialist worlds has moved to a new plane where the issue will be decided, not by arms, but by superiority of social, political and economic institutions and practices. Indeed, the First Amendment has become one of our most potent weapons in what the Chief Justice called "a contest for the hearts and minds of men." [39]

We believe that the reformulation of the clear and present danger test by the *Dennis* majority comes perilously close to substituting a rule of expediency for the command of the First Amendment. But even under that reformulation, there can be no doubt that the new balance which must be struck in this case requires a reversal of the conviction.[40]

---

[39] Address to the American Bar Association, 40 A.B.A. Jour. 955.

[40] The court below, disregarding the facts which distinguish this case from *Dennis*, relied on the latter as authority for the conclusion that the membership clause, on its face and as applied, satisfies the clear and present danger test (R. 631-32). The opinion in *Scales, supra* (at 588), as we have seen, holds that the membership clause does not involve conduct protected by the First Amendment and hence that the clear and present danger test is inapplicable.

III. It was reversible error to deny petitioner's motion that the trial judge inspect the contemporaneous report made to the F.B.I. by the witness, Brzek, concerning the subject matter of his testimony, for the purpose of determining whether the report contradicted the testimony and should therefore be made available to the defense.

As we have seen, Brzek testified that in 1947, while acting as an informer for the F.B.I., he attended a class taught by the petitioner at a Communist school in Ivanhoe, Wisconsin. He further testified that the petitioner gave a lecture studded with references to "bloodshed" and ending with the statement that, "If we have to shed blood we will" (R. 460-62; supra, p. 10). On cross-examination, Brzek stated that he had made a written report to the F.B.I. on the contents of this class room lecture (R. 467-68).

The petitioner moved for the production of the witness' F.B.I. report for inspection by the trial judge so that he could ascertain whether it contradicted the testimony and should therefore be made available to the defense (R. 468, 472). The prosecution did not deny the existence of the report or its availability, stating only that it had been made to the Milwaukee office of the F.B.I. and was not in the court room (R. 469). Nor did the prosecution urge that the contents of the report were confidential or privileged. Nevertheless, the Court denied petitioner's motion, and its ruling was affirmed by the court below (R. 472, 628-29).[41] This action was plainly erroneous and requires a reversal.

---

[41] The trial court had previously granted a similar motion with reference to the F.B.I. reports of the witness Czarnowski. It ruled, after inspecting them, that they did not contradict the testimony of the witness and hence should not be made available to the defense (R. 424-26, 469-70).

We have shown (p. 33) that an analysis of Brzek's testimonial version of the petitioner's remarks discloses that they contained no advocacy of violence, much less of the violent overthrow of the United States Government. Nevertheless, the testimony was highly prejudicial. The repeated and inflammatory references to bloodshed undoubtedly affected the jury and may well have tipped the beam against the petitioner, particularly because the Brzek testimony was the only direct evidence in the entire record that petitioner had ever contemplated a resort to violence for any purpose or under any circumstances. Moreover, the prosecution leaned heavily on this testimony in its summation [42] and the court below relied upon it in holding that the evidence sustained the verdict (R. 626).

It is clear that if Brzek's F.B.I. report in fact contradicted his testimony, the petitioner was entitled to inspect it, use it in cross-examination, and introduce it in evidence. *Gordon* v. *United States*, 344 U. S. 414, 417. A claim by the prosecution that the contents of the report were privileged, if it had been asserted, would have been unavailing, at least as to so much of the report as dealt with the subject of the witness' testimony. *United States* v. *Krulewitch*, 145 F. 2d 76, 78-79; *United States* v. *Grayson*, 166 F. 2d 863, 870. Cf. *Edwards* v. *United States*, 312 U. S. 473, 480-82; *United States* v. *Reynolds*, 345 U. S. 1, 12.

Obviously, Brzek's F.B.I. report itself contained the best, if not the only available evidence as to whether its contents contradicted the testimony of the witness. At a minimum, therefore, the petitioner was entitled to an inspection of the report by the trial court so that the latter might determine whether it tended to discredit the witness and hence was material to the defense. *United*

[42] At pp. 1357-58, 1365-66, 1455-59 and 1491 of the typewritten transcript of the record filed with the court below.

States v. *Le Bron* (C. A. 2), 222 F. 2d 531, 537; *United States* v. *Krulewitch* (C. A. 2), 145 F. 2d 76, 78; *United States* v. *De Normand* (C. A. 2), 149 F. 2d 622, 625; *United States* v. *Simonds* (C. A. 2), 148 F. 2d 177, 179; *Boehm* v. *United States* (C. A. 8), 123 F. 2d 791, 807-808; *Crosby* v. *Pacific S. S. Lines* (C. A. 9), 133 F. 2d 470, 475; *United States* v. *Schneiderman* (D. C. S. D. Calif.), 106 F. Supp. 731.[43] The procedure approved in these cases was followed in the *Scales* case, as appears from the opinion (227 F. 2d 581, 592). It has also been followed in the Fifth Circuit. See *Shelton* v. *United States*, 205 F. 2d 806, 814.[44]

Had the trial court, after inspecting the report, held that it was not material to the defense or admissible in evidence, the petitioner could have requested that it be sealed and certified as a part of the record so that the ruling below might be reviewed on appeal. See the *Krulewitch*, *De Normand* and *Simonds* cases cited above.

The error in refusing to inspect Brzek's report was magnified by the fact that a number of circumstances made the witness' testimony suspect. There is internal evidence of its fabrication, such as the statement that the petitioner said, "The bloodshed end, the bloodshed, it wouldn't be by, say, shooting firearms, to be a more quiet method" (R. 461).[45] Further, while Brzek purported to have a complete and accurate recollection of remarks made by petitioner eight years before the trial, his memory of other lectures given at the school and the identity of other teachers was

---

[43] The latter case is now before this Court for review of other questions *sub. nom. Yates* v. *United States*, *supra*. The decision in the *Schneiderman* case was cited with approval by the trial court in *United States* v. *Mesarosh*, 116 F. Supp. 345, 350.

[44] As we have seen (ftn. 41, *supra*), the trial judge himself followed this procedure in the case of the F.B.I. reports of the witness, Czarnowski.

[45] The court below commented on the high level of petitioner's intelligence (R. 620).

hazy or non-existent (R. 465-67). Finally, a prosecution witness, Miss Skinner, who attended the Ivanhoe school with Brzek (R. 450), preceded him to the stand. The prosecution, however, carefully refrained from questioning her about petitioner's lectures, but merely had her identify a typewritten schedule of the school classes (R. 450-51) which it later used to "refresh" Brzek's memory and to give his testimony a facade of verisimilitude (R. 456-58).

The court below treated petitioner's motion as though it had asked for the immediate submission of the Brzek report to him, and not for its inspection by the trial judge. Erroneously stating that petitioner relied principally on the decision in *Gordon* v. *United States, supra,* the court affirmed the ruling of the trial judge on the ground that petitioner had failed to establish a contradiction between the testimony and the report (R. 628). It did so without mentioning the decision on trial court inspection of reports, referred to above, which petitioner cited and relied upon in his briefs below.[46]

The opinion below also suggests that petitioner's motion was untimely, stating that it was not made until after the prosecution had closed its case (R. 628). The statement is erroneous, for the record shows that the motion was made at the conclusion of the testimony of the witness and before the prosecution rested (R. 468, 472).

The Solicitor General's opposition to the petition for certiorari (pp. 21-22) advances another version of the

---

[46] The court cited *Jencks* v. *United States,* 226 F. 2d 540 (cert. granted, No. 23, this term) which, in accord with the decision below, seems to have placed a motion for trial court inspection of F.B.I. reports on the same footing as a motion for their immediate production to the defendant. But cf. *Fisher* v. *United States,* 231 F. 2d 99, holding that the defense was entitled to the production to it of receipts of an informer witness for monies received from the F.B.I. without a showing that the receipts contradicted the testimony of the witness and notwithstanding that, at most, they would impeach him on a collateral issue.

untimeliness argument, urging that the motion came too late because it was not made until the witness stepped down from the stand. It is not and could not be asserted that the prosecution was prejudiced in any way because the motion was delayed until immediately after the witness was excused. The suggestion seems to be, however, that this fact would have foreclosed petitioner from making use of the report if the trial judge had made it available to him. The suggestion is groundless. Petitioner could have recalled the witness for further cross-examination. *Belanger* v. *Alton Box Board Co.*, 180 F. 2d 87, 94; *Ching* v. *United States*, 264 F. 639, 642, cert. den. 254 U. S. 630.[47] In the alternative, petitioner could obviously have offered the report as part of his affirmative case.

The decision below is not only contrary to the great weight of authority in other circuits but violates a principle that is fundamental to the administration of justice. As Judge Cooley states in *People* v. *Davis*, 56 Mich. 569, 573-4:

> "* * * the state has no interest in interposing any obstacle to the disclosure of the facts, unless it is interested in convicting accused parties on the testimony of unworthy persons. But surely the state has no such interest; its interest is that the accused parties shall be acquitted unless upon all the facts they are seen to be guilty; and if there be in the possession of its officers information that can legitimately tend to overthrow the case made for the prosecution, or to show that it is unworthy of credence, the defense should be given the benefit of it."

Observance of the principle stated by Judge Cooley is of special importance in the case of the testimony of pro-

[47] This was the procedure contemplated by the trial judge in the case of the F.B.I. reports of the witness, Czarnowski. The judge reserved decision on petitioner's motion for their production with the understanding that the witness would be subject to recall if the reports were thereafter made available to the defense (R. 424-26).

fessional informers. The reckless use of these informers by the Department of Justice in "security" cases has aroused widespread apprehension and alarm, particularly in the light of current revelations of the untrustworthiness of such testimony.[48] Only recently the Court had occasion to state the standard to be applied in passing upon a challenge to the veracity of informer witnesses:

> "'The untainted administration of justice is certainly one of the most cherished aspects of our institutions. Its observance is one of our proudest boasts. * * * Therefore, fastidious regard for the honor of the administration of justice requires the Court to make certain that the doing of justice be so manifest that only irrational or perverse claims of its disregard can be asserted.'"
>
> *Communist Party* v. *Subversive Activities Control Board*, 351 U. S. 115, 124.

The ruling below falls far short of meeting this standard. Court inspection of the relevant reports of F.B.I. informers is the minimum precaution required to assure defendants a fair trial and to guard the administration of justice against the use of tainted testimony. The denial of this safeguard by the court below requires a reversal.

---

[48] See, *e.g.*, Rovere, *The Informer, Harpers Magazine*, May 1955; Biddle, *Subversives in Government*, Annals of American Academy of Political Science, July 1955; Matusow, *False Witness* (1955); opinion of Dimock, J., granting new trials in *United States* v. *Flynn*, 130 F. Supp. 412.

IV. The Erroneous admission of prosecution evidence requires a reversal.

A. The Lautner Testimony

Lautner's role as a prosecution witness was confined to that of an "expert" who gave his opinion concerning the meaning of the term "Marxism-Leninism" and the "final aim" of the Communist Party (R. 203-11). There was no evidence that the opinion of the witness on these matters was shared by or even known to the petitioner with whom he had never so much as exchanged a word.[49] Nor does it appear that the Communist Party or any of its members was in agreement with the views which Lautner expressed.

The admission of this opinion testimony was erroneous.

In the first place, it was irrelevant. The issues of fact for the jury were whether petitioner had the knowledge and intent charged in the indictment. Evidence that the Communist Party advocated proscribed doctrine would have no tendency to establish guilt if petitioner was unaware of such advocacy. The only relevant advocacy of the organization was advocacy shown to have been within the knowledge of the petitioner. Accordingly, Lautner's uncommunicated personal opinion concerning the aims of the Communist Party and the meaning of Marxism-Leninism was plainly irrelevant.

The Lautner testimony was also incompetent. It is elementary that the acts and declarations of third persons, neither authorized nor ratified by the defendant, are inadmissible hearsay. *A fortiori,* opinion testimony must be excluded which, at most, represents the witness' conclusions from the acts and declarations of unidentified third parties unconnected with the petitioner.

The prosecution, however, proceeded on the premise that because the first paragraph of the indictment alleged

---

[49] Lautner's only contact with petitioner was on one occasion when he "checked him in" as a delegate to a convention (R. 170).

that the Communist Party is a society of persons who advocate the violent overthrow of the government, it was entitled to prove that allegation by evidence entirely unconnected with the petitioner, and was bound by the hearsay rule only when it offered evidence under the second paragraph of the indictment to establish that the petitioner had knowledge of the teaching and advocacy alleged in the first (R. 185). We believe it too plain for argument that the rule excluding third party acts and declarations not connected with the defendant, which is the procedural corollary of the principle that guilt is personal, cannot be circumvented by manipulating the form of an indictment.

Accordingly, if the first paragraph of the indictment should not be disregarded as surplusage, its allegation can be proved only by evidence which is admissible against a defendant in a criminal trial—i.e., by evidence of the defendant's own acts and declarations or those of others for which he is vicariously liable because he authorized or ratified them.

The court below dismissed our contention with the statement that the Lautner testimony was material (R. 627).

Several courts of appeals have held opinion testimony similar to Lautner's admissible in Smith Act conspiracy cases. E.g., *United States* v. *Dennis*, 183 F. 2d 201, 229. We believe this ruling erroneous. In any event it was based on conspiracy law and is therefore applicable. What the courts held was that since a statement by any of the co-conspirators as to his understanding of the meaning of "Marxism-Leninism" would be relevant to their mutual understanding of the term and competent against all of them, the conclusion of a witness, drawn from such statements, is likewise admissible. The following excerpt from the opinion in the *Dennis* case (at 229) makes it clear that this was the basis for the ruling:

> "He [the witness] was as well qualified as an expert to know what that meaning was as anyone

could be; and we cannot see any more reason to exclude his testimony *than to exclude the evidence of any other parts of the mutual understanding of the defendants.* As for the rule against conclusions, it is at most only one of convenience * * *." (Emphasis supplied.)[50]

The dangers inherent in the co-conspirator rule as conventionally applied[51] are multiplied when the rule is extended to admit the opinions or conclusions of a witness as to the mutual understanding of the conspirators. This is particularly true where the witness is permanently employed by the prosecution for the purpose of giving "expert" opinion that the defendants are guilty.

But whether or not the Lautner testimony would properly have been admissible in a conspiracy case, it should clearly have been excluded here. For the relevant issue was not the mutual understanding of the other members of the organization but that of the petitioner, as to which Lautner said nothing. Furthermore, the rule which makes the declaration of a conspirator or other partner in crime competent against his co-conspirators or co-partners is limited to cases in which the *indictment charges* a conspiracy or other form of concerted venture. The *Dennis* case itself states this limitation (at 230). And see also *McWhorter* v. *United States,* 281 F. 119, 121; *Sorenson* v. *United States,* 168 F. 785, 792; *Quercia* v. *United States,*

---

[50] That the ruling was based on conspiracy principles is also apparent from the form of the question put to the witness. After reading to the witness the clause of the Communist Party constitution stating that the organization bases itself "upon the principles of scientific socialism, Marxism-Leninism", he was asked: "What did you *in connection with the other Communists that you were working with there* [at the convention that adopted the constitution] understand that to mean." See the record in *United States* v. *Dennis,* p. 3635. (Emphasis supplied.)

[51] See Mr. Justice Jackson's concurring opinion in *Krulewitch* v. *United States,* 336 U. S. 440, 445.

70 F. 2d 997, 999; *Barrett* v. *United States*, 33 F. 2d 115, 116.[52]

As Mr. Justice Jackson wrote in the *Krulewitch* case, *supra* (at 449):

> "However, even when appropriately invoked the looseness and pliability of the [conspiracy] doctrine present inherent dangers which should be in the background of judicial thought wherever it is sought to extend the doctrine to meet the exigencies of a particular case."

Plainly, conspiracy doctrine is not "appropriately invoked" in a case where no conspiracy is charged. Nor can the doctrine be extended "to meet the exigencies" of the instant case without abrogating the fundamental precept of Anglo-American jurisprudence that guilt is personal.

The erroneous admission of the Lautner testimony requires a reversal. True, as we have shown (*supra*, p. 35), Lautner not only failed to support the allegation of the indictment that the Communist Party advocates the proscribed doctrine, but his answers on cross-examination refuted that charge. Nevertheless, his testimony was prejudicial.

In the first place, Lautner laid the foundation for the admission of a number of excerpts from the writings of Lenin and Stalin, and the *History of the Communist Party*

---

[52] The court in the *Scales* case, *supra* (at 591-92) held third party declarations admissible on the ground that the offense created by the membership clause is tantamount to a conspiracy and, hence, that the co-conspirator rule is applicable. This decision is not only contrary to the cases cited in the text but has the effect of denying to defendants in Smith Act membership cases the benefit of the limitation of the co-conspirator doctrine to situations where the jury has first found that a conspiracy was formed to which the accused and the declarant were parties and that the statements of the declarant were made in furtherance of the objects of the conspiracy. See *United States* v. *Dennis*, *supra*, at 230.

of the Soviet Union, which the prosecution then proceeded to read to the jury (*supra*, p. 16; R. 235-60). The damaging effect of these excerpts on which the case for conviction is staked was, of course, not repaired by the fact that the trial court limited the purpose of the admission of some of them to their bearing on the opinion testimony of the witness (R. 227-28).[53] In the words of Mr. Justice Jackson in the *Krulewitch* case (at 453), any such "naive assumption" would be an "unmitigated fiction."

Moreover, Lautner's use of such scare words as "the proletarian revolution" and "the dictatorship of the proletariat" (R. 206, 211) in stating his opinion as to the meaning of Marxism-Leninism and the objectives of the Communist Party, as well as the extended description of his activities in the Communist Party, given under the guise of qualifying him as an expert (R. 133-75), were highly prejudicial.

B. The Meyer Testimony

As we have seen (*supra*, p. 11), Meyer testified that, from 1934 to 1942, he had been closely associated with the petitioner in the Illinois Communist Party. However, except for confirming the admitted fact that petitioner had been a member and officer of the organization, the sole function of the Meyer testimony was to serve as a vehicle for the introduction in evidence of excerpts from the "classical" writings of Communism and the *History of the Communist Party of the Soviet Union*. These excerpts were offered and received on the basis of the witness' testimony that he had discussed them with the petitioner in connection with a revision of the teaching program in the Workers School (R. 96-108, 228-31). The witness said nothing concerning the content of the discussion, the peti-

[53] While Meyer testified that petitioner was familiar with some of the excerpts, there was no evidence that petitioner had ever read others (see, *supra*, p. 16).

tioner's interpretation of these writings, or his understanding of their application to conditions in the United States.

Meyer testified that the discussion of the books took place in "early 1940" (R. 96). The Smith Act did not become law until June 28, 1940 (18 U. S. C. 2385; Revisor's note), and the discussion in question therefore antedated the law.

The Meyer testimony would have been of doubtful admissibility even if it had established guilty knowledge or intent at the time the discussion occurred. See *Wolf* v. *United States* (C. A. 8), 259 F. 388; *Haywood* v. *United States* (C. A. 8), 268 F. 795, 806-07; *Langer* v. *United States* (C. A. 8), 76 F. 2d 817, 827, which hold that it cannot be presumed that a state of mind, innocent at the time it was shown to exist, will continue unchanged after the enactment of a law making it an element of an offense. *United States* v. *Dennis*, *supra* (at 231-32) and *United States* v. *Mesarosh*, *supra* (at 454) are to the contrary. We believe that the Eighth Circuit decisions state the better rule.[54]

In any event, the Meyer testimony is inadmissible for another reason. The discussions with petitioner not only antedated the Smith Act but took place fourteen or more years prior to the indictment. In the absence of any evidence as to the content of the conversations which occurred in this remote period, the bare fact that petitioner

---

[54] Cf. *Federal Trade Commission* v. *Cement Institute*, 333 U. S. 683, 705-06, a civil case, in which the Court said: "* * * testimony of prior and subsequent transactions, which for some reason are barred from forming the basis for a suit, may nevertheless be introduced if it tends reasonably to show the purpose and character of the particular transactions under inquiry. * * * *And of course rules which bar certain types of evidence in criminal or quasi-criminal cases are not controlling in proceedings like this* where the effect of the Commission's order is not to punish or fasten a liability on respondents for past conduct but to bar specified practices for the future * * *." (Emphasis supplied.)

was familiar with certain Marxist books and used them as classroom texts had, at best, only the slightest relevance to his knowledge and intent during the indictment period. Under these circumstances, the *Dennis* and *Mesarosh* decisions, even if correct, are inapplicable, as the court in the former case recognized. See *Kammann* v. *United States* (C. A. 7), 259 F. 192, 195, with which the *Dennis* opinion expressed agreement (at 231-232):

> "But if there was a prima facie case to go to the jury, it is apparent how damaging it would be to allow a close or doubtful case to be bolstered up with proof of expressions which are not fairly attributable to an intent or willingness to interfere with our military forces as proof of an intent to violate those commands of the Espionage Act when it should come to be enacted. That would virtually be giving an ex post facto effect to the statute itself."

The court below sustained the admission of Meyer's testimony in reliance on the *Dennis* and *Mesarosh* cases and without mention of its own decision in *Kammann* (R. 627).

The erroneous admission of the Meyer testimony requires a reversal. For it served as the foundation for the introduction in evidence of numerous highly prejudicial excerpts from the "classical" Marxist literature which, as we have seen, formed the heart of the case for the prosecution.

C. The "Classical" Literature

As we have seen, the only foundation for the introduction in evidence of the excerpts from the writings of Marx, Engels, Lenin and Stalin and from the *History of the Communist Party of the Soviet Union* was the testimony of Lautner and Meyer. If, as we have urged above, their testimony concerning these excerpts should have been excluded, it follows of course that the excerpts themselves were inadmissible.

The excerpts should have been excluded for an additional reason. The only evidence connecting petitioner with any of these exhibits was contained in the testimony of Meyer, who stated merely that the two men had discussed them and that petitioner had used them as class room texts. There was no evidence that the petitioner (or, for that matter, the Communist Party or any of its members) had ever understood or taught that the "classical" literature advocated the violent overthrow of the government of the United States. The record establishes only that petitioner and the Communist Party engaged in peaceable study, discussion and teaching of these writings. Such conduct is not and cannot be proscribed. *Dennis* v. *United States, supra* (at 501-02).

Nevertheless, the court below held that the excerpts were admissible, stating that they were probative of the current program and teachings of the Communist Party and the knowledge and intent of petitioner (R. 628). By this logic, Jefferson's recommendation that the tree of liberty be refreshed by the blood of patriots and tyrants [55] is probative of the charge that the Democratic Party currently advocates violent overthrow and that any Democrat who professes to be a Jeffersonian has guilty knowledge and seditious intent.

---

[55] In a letter to William Smith hailing Shay's Rebellion. The court below seems to believe that we cited this statement as a justification for the advocacy of violence (R. 626).

V. It was error to instruct the jury that the teaching and advocacy alleged in the indictment has reference to the teaching and advocacy of the Communist Party as an entity and not to that of its members individually.

Both paragraphs of the indictment (R. 3), in conformity with the statute, refer to the Communist Party as "a society, group and assembly of *persons who* teach and advocate" the proscribed doctrine. Strictly construed, as they must be, the statute and the indictment plainly do not refer to the advocacy of the organization as an entity but to that of the "persons who" are its members. Obviously, if only the leaders or a small fraction of the members engaged in the proscribed advocacy, without authorization or ratification by the other members, the organization could not be a "society of persons" who so advocate. It follows that the indictment required proof that, to petitioner's knowledge, a majority, or at least a substantial proportion, of the members advocated illicit doctrine either personally or vicariously.

Petitioner's request for an instruction to this effect was denied (R. 520-21, 553-54, 616-18). Instead, the trial court instructed the jury (R. 577) that the teaching and advocacy alleged in the indictment refers to the teaching and advocacy of the organization and not to that of its members individually. The court below affirmed without discussion.

The ruling below was erroneous. Had Congress intended the test of guilt to be knowledge of the alleged advocacy of the organization as an entity, it could have said so in clear and unequivocal terms. Indeed, it has said so clearly and unequivocally in other legislation relating to the same general subject matter. Thus, the Immigration and Nationality Act provides for the exclusion or deportation, and prohibits the naturalization, of any alien "who is a member of or affiliated with *any organization that* advocates or teaches" the overthrow by force

or violence of the government of the United States. 8 U. S. C. 1182(a)(28)(F), 1251(a)(6)(F), 1424(a)(4) (emphasis supplied). Similarly, the Labor Management Relations Act makes provision for an affidavit from each officer of a labor organization that he "is not a member of or supports any *organization that* believes in or teaches the overthrow of the United States Government by force." 29 U. S. C. 159(h) (emphasis supplied).

It cannot be argued that the distinction between the two formulations is without a difference. An unincorporated association is an entity distinct from its membership. Acts or advocacy of the former cannot be imputed to the latter in the absence of authorization or ratification. *United States* v. *White*, 322 U. S. 694, 703. Cf. *Coronado Coal Co.* v. *United Mine Workers of America*, 268 U. S. 295; *United Mine Workers of America* v. *Coronado Coal Co.*, 259 U. S. 344.

Had the trial court granted petitioner's requested instruction, there could not have been a conviction. For the prosecution tried the case on the theory of the instruction which was given and offered no evidence that, to the knowledge of the petitioner or otherwise, individual members of the Communist Party engaged in, authorized or ratified the proscribed advocacy.

VI. Prosecution of the offense charged in the indictment is barred by section 4(f) of the Internal Security Act.

Section 4(f) of the Internal Security Act (50 U. S. C., 783(f)) provides that, "Neither the holding of office nor membership in any Communist organization by any person shall constiute *per se* a violation of subsection (a) or subsection (c) of this section *or of any other criminal statute*" (emphasis supplied).

The gravamen of the indictment is that membership in a Communist organization (the Communist Party) with

knowledge of the alleged illicit advocacy of the organization or its members *does* constitute a violation of a criminal statute—*i.e.*, the membership clause of the Smith Act. Accordingly, section 4(f) bars the prosecution of the offense charged in the indictment unless membership in the Communist Party, when accompanied by knowledge of the alleged illicit advocacy, is something more than membership "per se," and is therefore not included within the immunity which section 4(f) confers.

An examination of the language and legislative history of section 4(f) demonstrates that the purpose, intent and effect of the section was to bar the prosecution of offenses based on membership in the Communist Party unaccompanied by any other *overt act*, and specifically to bar the prosecution of Communists under the membership clause of the Smith Act.

It is obvious from the face of section 4(f) that Congress was of the opinion that membership *per se* did constitute a violation of some criminal statute other than the Internal Security Act. Otherwise, there would have been no point in the reference to "any other criminal statute." At the time the Internal Security Act was enacted, there was no statute in existence making membership in the Communist Party criminal when not accompanied by knowledge of the alleged seditious character of its advocacy or that of its members. The only criminal statute on the books which might have been applicable to members of the Communist Party by virtue of their membership was that portion of the Smith Act under which the indictment is laid.

It is plain therefore that the reference in section 4(f) to "any other criminal statute" is meaningful only if it refers to the membership clause of the Smith Act. But, under that clause, membership in the Communist Party is not a crime unless the member has knowledge of the alleged seditious advocacy of the organization or its members. Accordingly the term membership "per se" as used in

section 4(f) of the Internal Security Act must have been intended by Congress to embrace membership with knowledge of such seditious advocacy. A contrary construction of section 4(f) would require treatment of the reference to "any other criminal statute" as surplusage and violate the familiar principle that, if possible, effect be given to all of the words of an enactment. *McDonald* v. *Thompson*, 305 U. S. 263, 266.

This is not to say that Congress intended section 4(f) to repeal the membership clause of the Smith Act. What it did clearly intend, however, was to make that clause unavailable for the prosecution of members of the Communist Party.

This reading of section 4(f) is confirmed by its legislative history.

The Internal Security Act provides machinery for the compulsory registration of "Communist-action" organizations. It provides that in the event of the failure of an organization to register when ordered to do so, and to list the names of all of its members, the individual members must register themselves (sections 7 and 8; 50 U. S. C. 786, 787). The statute further provides onerous criminal penalties for the failure of the organization's officers and members to comply with these requirements (section 15; 50 U. S. C. 794). See, *Communist Party* v. *Subversive Activities Control Board, supra.*

The legislative history reveals that the purpose of the immunity provision of section 4(f) was to insure the enforceability of these registration requirements by making the privilege against self-incrimination unavailable to officers and members as a defense against prosecution for failure to register.[55a]

[55a] We are not here concerned with whether the immunity conferred by 4(f) is broad enough to accomplish this purpose, but only with the question of Congressional intent.

The original Senate bill on which the Internal Security Act was based (S. 2311, 81st Cong., 1st Sess.) contained no immunity provision. However, the problem posed by the constitutional privilege against self-incrimination was raised early in the history of the legislation. John W. Davis, Esq., pointed out in a letter to the Senate Committee considering the bill that the provision for compulsory registration by individual members would compel self-incrimination under section 4(a) of the bill, making it a crime to conspire to establish a dictatorship under foreign control (Sen. Rep. No. 1365, 81st Cong., 2nd Sess. pp. 43-44).

As a result of the Davis letter and similar representations by others, the Senate Committee which had the bill under consideration added an immunity provision as section 4(f). This section of the bill provided that neither the holding of office nor membership in a Communist organization should constitute a violation of section 4(a) or 4(c) of the Internal Security Act (*id.*, p. 2). The Senate version, however, made no reference to "any other criminal statute."

The minority of the Senate Committee which reported out the bill stated in a minority report that the immunity given by section 4(f) was entirely indequate to bar an assertion of the privilege against self-incrimination as a defense to a prosecution for failure to register. The minority pointed out that the problem of self-incrimination inherent in the registration requirement was created not only by sections 4(a) and 4(c) of the Internal Security Act, but by the membership clause of the Smith Act as well. Referring to the wording of section 4(f) in the Senate bill, the minority report stated:

> "It is clear that this provision is an inadequate substitute for the constitutional privilege against self-incrimination * * *. And, of course, section 4(f) does not even purport to avoid self-incrimina-

tion in relation to the membership clause of the Smith Act." Senate Report No. 2369, Part 2, 81st Cong., 2d Sess., 12-13.

The same criticism of section 4(f) was made in the floor debate by Senators Kefauver, Humphrey and others (96 Cong. Rec. 14479, 15198).

Section 4(f) as reported out by the House Committee likewise limited the grant of immunity to prosecutions under sections 4(a) and 4(c) of the bill itself (96 Cong. Rec. 13752). In the course of the floor debate, Representative Celler read a letter from the Attorney General calling attention to the problem of self-incrimination created by the registration provisions of the bill. He then pointed out that the wording of section 4(f) in the pending bill would not resolve this problem since it did not grant immunity from prosecution under the membership clause of the Smith Act (96 Cong. Rec. 13739). It was only after this warning that the House amended the section by adding the phrase "or of any other criminal statute," which appears in the act as passed (96 Cong. Rec. 13761).

It is clear from the foregoing that Congress believed that the Fifth Amendment privilege compelled it to choose between the registration provisions of the Internal Security Act and the membership clause of the Smith Act as the means for dealing with Communist Party members whose only overt act is that of membership in the organization. After lengthy deliberation, it chose the former, and therefore amended section 4(f) in a manner which it believed would immunize Communist Party members from prosecution under the membership clause of the Smith Act.

That this was the result that Congress intended and thought it had accomplished by section 4(f) is confirmed by the legislative history of the Communist Control Act of 1954. That Act had its origin in S. 3706, a bill to amend the Internal Security Act by making provisions with respect to so-called "Communist-infiltrated organizations"

(100 Cong. Rec. 14208). At the inception of the Senate debate on this bill, an amendment was offered by Senator Humphrey (*ibid.*) which was later adopted by the Senate as an addition to the original bill (*id.*, p. 14234). The Humphrey amendment was prefaced by a Congressional finding reciting in substance that the Communist Party has for its purpose the violent overthrow of the Government (*id.*, p. 14208). The heart of the Humphrey amendment was contained in section 3, which read as follows (*ibid.*):

> "Whoever knowingly and wilfully becomes or remains a member of (1) the Communist Party, or (2) any other organization having for one of its purposes or objectives the establishment, control, conduct, seizure or overthrow of the Government of the United States, or the government of any state or political subdivision thereof, by the use of force or violence, *with knowledge of the purpose or objective of such organization*, shall upon conviction be punished as provided by the penalty provisions of Section 15 of the Subversive Activities Control Act of 1950 (50 U. S. C. 794)." (Emphasis added.)[56]

[56] The fact that knowledge of the alleged purpose of the Communist Party was an element of the defense defined in the Humphrey amendment is not only apparent from its text but was confirmed by the author in explaining his proposal in the floor debate: *"The language is quite plain.* Of course, it is predicated, as set forth in section 2, upon the findings of fact, which findings of fact already label the Communist Party as a conspiratorial force dedicated to the overthrow of the Government of the United States. Therefore, section 3 provides that whoever knowingly or wilfully becomes and remains a member *and has knowledge of the purposes and the objectives of such organization* ipso facto automatically becomes subject to the penalties. * * * How one thinks is entirely his own business. But if he maintains membership in an organization, and maintains it knowingly and willingly, and becomes and remains a member of an organization which has as its objective the overthrow of the government of the United States, *and does this with knowledge of the purposes of the organization*, then he is subject to the penalty." (100 Cong. Rec. 14232; emphasis supplied.)

Thus, the Humphrey amendment made membership in the Communist Party, when accompanied by knowledge of its alleged illicit purpose, a crime punishable by the penalties provided in section 15 of the Internal Security Act—*i.e.*, by imprisonment of not more than 5 years or a fine of not more than $10,000. Accordingly, the crime which the Humphrey amendment proposed to create was identical with the crime charged in the indictment.

The Humphrey amendment precipitated a bitter controversy both within Congress and between the Administration and the Congressional proponents of the amendment. The Administration and the Congressional leadership opposed the amendment on the ground that it would destroy the effectiveness of the Internal Security Act. They argued repeatedly and at length that the Humphrey amendment would repeal an essential provision of section 4(f) of that Act and permit the successful assertion of the privilege against self-incrimination as a defense to a prosecution for failure to register.

This position was stated and restated throughout the debate by many Senators and Representatives, including Senator Butler, the author of S. 3706, Senators Ferguson and McCarran, co-authors of the Internal Security Act, Representative Reed, Chairman of the House Judiciary Committee, and Representative Halleck, the Majority leader (100 Cong. Rec. 14211, 14222-23, 14566, 14578, 14643, 14652, 14658, 14723, 14850). All of these Senators and Representatives stated that they not only spoke for themselves but were expressing the views of the Attorney General and the Administration. Excerpts from four typical statements are contained in Appendix C.

Congress accepted and acted upon the representations and arguments of its leaders. It revised the Humphrey amendment, and enacted a law which eliminated all criminal sanctions for membership in the Communist Party. (See sections 3 and 4 of the Communist Control Act of 1954; 50 U. S. C. 842, 843.)

It is plain that the debate and the action of Congress on the Humphrey amendment were predicated on the assumption that section 4(f) of the Internal Security Act prohibits the prosecution of Communists under the membership clause of the Smith Act. If Congress had believed prosecution under that clause permissible notwithstanding section 4(f), the controversy around the Humphrey amendment would have been pointless. For the controversy and its resolution were based on the proposition that membership in the Communist Party with knowledge of its alleged illicit purpose is not now a crime and should not be made a crime.

The opinion below, quoting from the opinion in *Scales*, holds that the crime charged in the indictment is not within the immunity conferred by section 4(f) because membership "per se" does not embrace membership in the Communist Party when accompanied by knowledge that the organization advocates proscribed doctrine (R. 633-34). Neither opinion attempts to reconcile this construction of 4(f) with the reference it makes to "any other criminal statute" or with the legislative history which we have described.

The courts below (R. 634) also relied on the savings clause of the Internal Security Act (50 U. S. C. 796) to support their conclusion. The clause provides that the Act "shall be construed as being in addition to and not in modification of existing criminal statutes." These words, however, do not nullify the reference in section 4(f) to "any other criminal statute." It is a familiar principle of statutory construction that specific provisions prevail over general language used in the same statute. *Ginsberg & Sons* v. *Popkin*, 285 U. S. 204, 207. Accordingly, a general saving clause cannot override express provisions found in the body of the enactment. *United States* v. *Yuginovich*, 256 U. S. 450, 463; *United States* v. *Ginn*, 222 F. 2d 289, 290-91. The rule of the latter cases has special pertinence here where the reference to "any other crimi-

nal statute" was added by a last minute floor amendment when Congress obviously had no opportunity to consider the possible inconsistency between these words and the savings clause which was contained in the bill as reported out of committee.

VII. The findings of the Communist Control Act with reference to the Communist Party deprived the petitioner of the right to a fair and impartial trial.

Section 2 of the Communist Control Act (50 U. S. C. 841) "finds and declares that the Communist Party of the United States is in fact an instrumentality of a conspiracy to overthrow the government of the United States." It further finds that the Communist Party "gives scant indication of capacity ever to attain its ends by lawful means" and is dedicated "to the proposition that the present constitutional government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence." The section concludes with the declaration that, "therefore the Communist Party should be outlawed."

Section 3 of the same act (50 U. S. C. 842) refers to, "The Communist Party of the United States or any successor to such Party, regardless of the assumed name, whose object or purpose is to overthrow the government of the United States * * * by force and violence." The section then provides that "whatever rights, privileges and immunities which have heretofore been granted to said Party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof are hereby terminated."

Section 4 of the Act (50 U. S. C. 843) refers to persons who knowingly and wilfully become or remain members of the Communist Party or "any *other* organization having for one of its purposes" the violent overthrow of the government (emphasis supplied).

Thus, each of the three sections contains a specific finding by the Congress that the Communist Party advocates the violent overthrow of the government. It was because of the asserted truth of this finding that Congress declared the Communist Party to be an outlaw organization and stripped it of all rights, privileges and immunities.

One element of the offense charged in the indictment, as construed by the trial court (see *supra*, p. 75), is that the Communist Party advocates the violent overthrow of the government. The petitioner was entitled to a fair and impartial jury trial of this, as of every other, issue of fact. This issue, however, was predetermined by Congress in the Communist Control Act. A fair and impartial jury trial was therefore impossible.

The essence of the trial guaranteed by the Constitution consists of the freedom of the trier of fact to reach an independent, objective and impartial verdict on the evidence. *Moore* v. *Dempsey*, 261 U. S. 86; *Frank* v. *Mangum*, 237 U. S. 309, 335. As stated in *Mooney* v. *Holohan*, 294 U. S. 103, 112, the due process clause "is a requirement that cannot be deemed to be satisfied by mere notice and hearing if a State has contrived a conviction through the pretense of a trial * * *." And in *Manley* v. *Georgia*, 279 U. S. 1, 6, it was stated that, "Mere legislative fiat may not take the place of fact in determination of issues involving life, liberty or property."

Here, the findings of Congress in the Communist Control Act in essence "contrived conviction through the pretense of a trial." For it can scarcely be contended that a jury which is presumed to know the law will ignore statutory findings which bluntly tell it that the Communist Party is an outlaw organization dedicated to the use of force and violence for the overthrow of the existing government. This was one of the questions of fact which the jury was supposed to examine at the trial on the basis of the evi-

dence.[57] But in the face of the finding made by Congress and approved by the President, it would be naive to suppose that the jury would even consider the question *de novo*, much less make a contrary finding.

The court below held that any damage from the Congressional findings could have been discovered on the *voir dire* examination of the jurors and was cured by the instructions (R. 633). But neither *voir dire* questions nor trial court instructions which made specific reference to the Communist Control Act could have overcome the prejudicial effect of the legislation. Quite the contrary, they would have resulted only in specifically directing the attention of the jurors to it. Cf. *Delaney* v. *United States*, 199 F. 2d 107, 112.

The court below correctly stated our position to be that there cannot be a valid trial of a Communist under the membership clause unless and until the pertinent sections of the Communist Control Act are either repealed or invalidated (R. 633). Congress cannot have its cake and eat it. It cannot declare a named organization to be engaged in criminal conduct and simultaneously preserve the right to a fair trial of the precise issue which it has predetermined by fiat.

In fact, Congress had no reason to believe that enactment of the Communist Control Act would give rise to this dilemma. For when it passed that statute, it was of the opinion that the prosecution of Communists under the membership clause had already been barred by section 4(f) of the Internal Security Act (see *supra*, p. 80). If it was correct in that opinion, the indictment must be dismissed without reaching the question of the fairness of the trial. But if the Court finds otherwise, the conviction must be reversed because the findings of the Communist Control Act made a fair trial impossible.

---

[57] As we have shown, the only admissible evidence on this issue is evidence of facts within the knowledge of petitioner (see *supra*, p. 67).

Conclusion

The conviction and the affirmance below would have been almost unthinkable before the decisions in *Dennis* and in the Smith Act conspiracy cases which followed in its wake.[58] We believe that the *Dennis* case was wrongly decided. We share the hope expressed by Mr. Justice Black (at 581), "that in calmer times, when present pressures, passions and fears subside, this or some later Court will restore the First Amendment liberties to the high preferred place where they belong in a free society." But whatever the ultimate fate of the decision in *Dennis* may be, it cannot and should not be extended, in the calmer times we have already begun to experience, to sustain the constitutionality of the membership clause. And in no event can it furnish a warrant for the affirmance of a conviction on a record devoid of evidence of illicit advocacy, incitement to violence, or seditious knowledge or intent, in a period when the relaxation of international tensions holds out the hope of lasting peace.

The judgment below should be reversed with directions to dismiss the indictment or enter a judgment of acquittal.

Respectfully submitted,

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

---

[58] This appears to have been the view of the experienced trial judge. See R. 472-73, 480-81.

APPENDIX A

Statutes Involved

1. Section 2 of the Smith Act, 18 U. S. C. 2385:

Whoever knowingly or wilfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; or

Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof—

Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction.

2. Section 4(f) of the Internal Security Act, 50 U. S. C. 783(f):

Neither the holding of office nor membership in any Communist organization by any person shall constitute per

se a violation of subsection (a) or subsection (c) of this section or of any other criminal statute. The fact of the registration of any person under section 787 or section 788 of this title as an officer or member of any Communist organization shall not be received in evidence against such person in any prosecution for any alleged violation of subsection (a) or subsection (c) of this section or for any alleged violation of any other criminal statute.

3. Sections 2, 3 and 4 of the Communist Control Act, 50 U. S. C. 841-43:

Sec. 2. The Congress hereby finds and declares that the Communist Party of the United States, although purportedly a political party, is in fact an instrumentality of a conspiracy to overthrow the Government of the United States. It constitutes an authoritarian dictatorship within a republic, demanding for itself the rights and privileges accorded to political parties, but denying to all others the liberties guaranteed by the Constitution. Unlike political parties, which evolve their policies and programs through public means, by the reconciliation of a wide variety of individual views, and submit those policies and programs to the electorate at large for approval or disapproval, the policies and programs of the Communist Party are secretly prescribed for it by the foreign leaders of the world Communist movement. Its members have no part in determining its goals, and are not permitted to voice dissent to party objectives. Unlike members of political parties, members of the Communist Party are recruited for indoctrination with respect to its objectives and methods, and are organized, instructed, and disciplined to carry into action slavishly the assignments given them by their hierarchial chieftains. Unlike political parties, the Communist Party acknowledges no constitutional or statutory limitations upon its conduct or upon that of its members. The Communist Party is relatively small numerically, and

gives scant indication of capacity ever to attain its ends by lawful political means. The peril inherent in its operation arises not from its numbers, but from its failure to acknowledge any limitation as to the nature of its activities, and its dedication to the proposition that the present constitutional Government of the United States ultimately must be brought to ruin by any available means, including resort to force and violence. Holding that doctrine, its role as the agency of a hostile foreign power renders its existence a clear present and continuing danger to the security of the United States. It is the means whereby individuals are seduced into the service of the world Communist movement, trained to do its bidding, and directed and controlled in the conspiratorial performance of their revolutionary services. Therefore, the Communist Party should be outlawed.

SEC. 3. The Communist Party of the United States, or any successors of such party regardless of the assumed name, whose object or purpose is to overthrow the Government of the United States, or the government of any State, Territory, District, or possession thereof, or the government of any political subdivision therein by force and violence, are not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the United States or any political subdivision thereof; and whatever rights, privileges, and immunities which have heretofore been granted to said party or any subsidiary organization by reason of the laws of the United States or any political subdivision thereof, are hereby terminated: *Provided, however,* That nothing in this section shall be construed as amending the Internal Security Act of 1950, as amended.

SEC. 4. Whoever knowingly and willfully becomes or remains a member of (1) the Communist Party, or (2) any

other organization having for one of its purposes or objectives the establishment, control, conduct, seizure, or overthrow of the Government of the United States, or the government of any State or political subdivision thereof, by the use of force or violence, with knowledge of the purpose or objective of such organization shall be subject to all the provisions and penalties of the Internal Security Act of 1950, as amended, as a member of a "Communist-action" organization.

(b) For the purposes of this section, the term "Communist Party" means the organization now known as the Communist Party of the United States of America, the Communist Party of any State or subdivision thereof, and any unit or subdivisions of any such organization, whether or not any change is hereafter made in the name thereof.

APPENDIX B

Summary of the Testimony Concerning Meetings Addressed or Attended by Petitioner [1]

November 30, 1945: (Czarnowski, R. 346-47). The petitioner was present but did not speak. The witness testified that Gil Green, then state chairman of the Communist Party of Illinois, said, "that the national committee had arrived at a decision that Communist veterans who have left the service should infiltrate the American Legion and Veterans of Foreign Wars, and take over the leadership of these organizations, and he said that Hitler has taken over, has taken over the government of Germany by the aid of veterans."

1946: (Herron, R. 43-44). The witness testified that the petitioner was a speaker and said "that he had been wrong in not wanting to organize the Party more, and he felt that they should get out to organize, especially on the South Side, and that they should challenge Harlem in New York to see if they couldn't get more members than Harlem could."

1946: (Czarnowski, R. 347-48). The witness testified that the petitioner spoke and, "referred to the international situation in 1917 and 1921 and he said that the labor movement at that time was more militant, but that the revolutionary movement did not succeed in all movements because of such as we had here, Reuther, Walter Reuther and Livinshky,[2] with the exception of Russia, but the revolution succeeded under the wise leadership of Lenin and Stalin."

---

[1] Unless otherwise indicated, each of the meetings was held in Chicago. The name of the witness and the appropriate record reference is indicated immediately after the date of each meeting.

[2] Reuther was a child in 1917. "Livinshky" was not otherwise identified by the witness.

April 24, 1947: (Czarnowski, R. 348-50). The petitioner did not speak. The meeting was addressed by one Ed Starr (not otherwise identified) and one Andy Neuhoff, identified by the witness as a Communist functionary. The witness testified that Neuhoff said that, "the veterans are very important force, and this can readily be seen in the American Legion and Veterans of Foreign Wars. He said that as Dick Crowley told him, the veterans, and especially those who had taken part in battles and won battle stars, cannot very readily be accused of being un-American. Even admitted Communists, an admitted Communist can say 'And where in the hell were you? I was there. Is that un-American.' And then it was said that Communists have a better opportunity, or have the advantage of being a spearhead to infiltrate unions and take over the leadership of unions, and the labor movement in general."

According to the witness, Ed Starr "confirmed the statement made by Neuhoff, saying that it must be recognized that the veterans constitute a very important force, and this can readily be seen in what use Hitler and Mussolini made of their veterans' organizations."

July 16, 1947: (Czarnowski, R. 350-51). The witness testified that the petitioner was a speaker and said "that he and several others were called before the investigating committee and were told to bring in the files of the Communist Party. And he told the functionaries they would play hell before they would get those files. • • • He said about functionary—I mean leaders of communities that feel safe to work in the communities as Communists, they should come out as such. However, if a Communist feels—a leader, feels that it is not safe to come out in the open as a Communist, he should stay under cover until such time when it is safe to come out without jeopardizing his position as a leader in that community."

September 11, 1947: (Czarnowski, R. 351-52). The occasion of the meeting was the 100th anniversary of Marxism.

The petitioner did not speak. Gil Green and John Gates, a member of the national committee of the Communist Party addressed the meeting. According to the witness, Gates "reviewed the history of the Communist Party from the time of Marx and Engels to that date, and he said, referring to the revolution—Russian revolution, he said that in 1916 there was one Czar and one Pope. The Bolshevik revolution liquidated the Czar but the Pope is still here. He said that Communism is a science and Communists do not believe in prayer to reach their objectives. They believe in concrete work of getting there. * * * He then quoted Lenin that it will take many years of hard work to establish proletarian governments in the world and referring to a statement made by Claude Lightfoot he said that that of establishing a proletarian government in the United States * * * [sic.]. He said that the European—Western European nations are puppets of the United States; and that sooner or later they will overthrow their regimes and establish democratic peoples forms of government under the guidance of the Soviet Union." According to the witness, Green "praised the Soviet Union. He said that the Soviet Union is a powerful nation today and a leader in world affairs, to be reckoned with, that we should be proud to be Communists, and that he hopes that the next anniversaries—now I don't remember what he said, 150th, 200th anniversary, the next anniversary he hopes to celebrate the Marxism in the United States and the Soviet Republic of the United States."

November 27-30, 1947: (Czarnowski, R. 352-54). The occasion was the state convention of the Communist Party. The petitioner was elected to the state board. Green spoke and "pressed the importance of education in Marxism-Leninism for members of the Communist Party. He said that the unions are falling into the hands of the Social Democrats; that Party members should take a more active part in the unions. * * * He said that Truman is following

an imperialistic foreign policy; that the Marshall Plan was originally created to feed hungry people, but that it is being used against—to rearm fascist forces against the Soviet Union; Greece and China are examples of peoples' struggle against British and American imperialists."

March 21, 1948: (Czarnowski, R. 355). The petitioner spoke, but the witness could not recall what was said.

August, 1948: (Cummings, R. 437-38). The occasion was a national convention of the Communist Party in New York City. The petitioner sat on the platform, presided at one session and made a report. The witness was not asked and did not testify as to what was said by the petitioner or any other speaker.

November 20, 1948: (Czarnowski, R. 356-60). The occasion was a state convention of the Communist Party. The petitioner spoke, but the witness did not recall what was said. Petitioner was elected as one of a three member "regional organization of shop branches," the purpose of which was to organize Communist Party branches in various shops, particularly in basic industries.

August 26, 1950: (Czarnowski, R. 361). The occasion was the birthday of Elizabeth Gurley Flynn, a member of the national committee of the Communist Party. The petitioner was the chairman and a speaker, but the witness did not testify as to what he said: According to the witness, Miss Flynn, who spoke, "expressed a hope to live long enough to see world Socialism."

November 10, 1950: (Czarnowski, R. 362-64). The occasion was the 33rd anniversary of the Russian Revolution. The petitioner spoke, and G. Ex. 63 contains his speech. According to the witness, the petitioner said that the revolution "was brought about by the lower class to oust the upper class under the wise leadership of Lenin and Stalin. * * * And he said that the capitalists cannot get along without—capitalist countries cannot get along without wars.

* * * He said that this generation went through two wars and that Washington is planning a third world war."

February, 1951: (Ondrejka, R. 305-07). The occasion was a celebration of Negro history week in Milwaukee. According to the witness, the petitioner, the principal speaker, "traced the movements of the Negro peoples from the time of the American revolution thru the Civil War to the present day" and said that from the Civil War "until the Communist Party had taken up the fight for the Negro people, nothing had been done for the Negro peoples in the United States, and without the Communist Party there could be no gains for the Negro peoples." The petitioner also "traced back about the Congressional investigations, and the fact he had been called before a legislative committee of the Illinois Legislature as to his activities. At that time he had mentioned the fact that they could do him nothing nor could the Congressional investigations of the United States stop our Party from advancing forward."

May 26, 1951: (Czarnowski, R. 334-35). The occasion was a testimonial dinner to the petitioner at which, according to the witness, he said, "that he had joined the Communist Party because the Communist Party is fighting for the rights of the Negro people, and only the Communist Party can give them freedom and equality. He accepts this elevation to the highest office in the Communist Party, to the National Committee, as an elevation of the Negro people."

June, 1951: (Ondrejka, R. 307-10). The meeting was addressed by Green and the petitioner. According to the witness, Green stated that he was about to go to jail and "stressed the fact that it is the time for the people in the Communist Party, especially those that held a white-collar position, to take off their white collars and go into the ranks of labor. * * * * At that time he had said that we must unite ourselves with labor in such a way that we become

a part of the labor movement and be indistinguishable from it." The witness testified that the petitioner said that "by taking off the white collar" and going into the working class movement "we would be following the Marxian line and furthermore, we would be doing an honor to Gil Green, now that he was going to prison."

June 11, 1951: (Czarnowski, R. 370-72). The meeting was addressed by Green and the petitioner. According to the witness, Green said "that we must mobilize the people for a peace movement, and Party members should contact labor union leaders, church leaders, and civic leaders to stir them into a peace movement. He said 'If we cannot prevent war, we must at least delay it for time is on our side.'" The witness testified that the petitioner addressed Rev. Father Frank Parker as "Comrade Reverend Parker," and referring to the story of David and Goliath said "our slingshots are not as big as the weapons our enemies are using, but we will win at the end in spite of it." The witness further stated that by "our enemies" the petitioner was referring "to the reactionary forces in the United States." The meaning concluded with the singing of the *International.*

APPENDIX C

Excerpts from the Congressional Debate on the Communist Control Act

House Majority Leader Halleck (100 Cong. Rec. 14850):

> "I have as quickly as I could and as well as I could examined the language of this amendment. *As I read it, it does undertake to make membership in the Communist Party a felony per se* • • •. Again may I point out, as I and others pointed out yesterday, that if you make membership in the Communist Party per se a felony, then to require them to register, which is the requirement of the Internal Security Act, would require them to provide evidence incriminating themselves, and thus necessarily would excuse them from compliance with the act. The appeal that is pending now in the circuit court of appeals to determine the validity of the Internal Security Act of 1950 would be immediately written off. They will be in there with a petition to remand the case and it will be remanded. Do not scoff at that. That is the exact fact. *That is the position taken by the Attorney General, by the Director of the F.B.I., J. Edgar Hoover, and by the lawyers who have studied the matters.*" (Emphasis supplied.)

Representative Reed, Chairman, House Judiciary Committee (*id.*, p. 14643):

> "Section 3 of the bill, as it passed the Senate, merely provided that one who remained, or became a member of the Communist Party or organization advocating the overthrow of the Government, by force or violence, with knowledge of that purpose, and who committed an overt act in furtherance of those objectives was subject to a criminal penalty.
>
> "*That provision, as it passed the Senate, destroyed the very effective Subversive Activities Control Act of 1950, which specifically provided that*

membership in the Communist organization was not per se a violation of any criminal statute. Such provision was written into the law in order that the registration and filing requirements operate effectively to control these Communist groups. Otherwise, they could have pleaded their privilege against self-incrimination and thereby avoid the requirements of the statute. The Senate version would have destroyed the very effective requirements of the Internal Security Act and would thus have defeated the very purpose for which it was written." (Emphasis supplied.)

Senator Ferguson, a co-author of the Internal Security t (*id.*, p. 14723):

"Here we are creating a new crime, the crime of knowingly and willfully becoming or remaining a member of the Communist Party or an organization which is described in the bill. The section continues and defines what a member is.

I submit to the Senate this plain question: Does the Senate desire at this time to repeal the Internal Security Law which was passed in 1950, which was vetoed by the President of the United States, and which was passed over the veto of the President of the United States in the House of Representatives and in the Senate? Do we desire today, by this vote, to repeal the real keystone of the arch in that legislation? If we do, then we should vote for this amendment.

If we vote for this amendment, we cannot have registration of Communists, because to require a man to testify against himself by registration would be violating the Constitution of the United States. There is no law of the land which would require a man to violate that provision of the Constitution and register, if there was a law making it a felony, as is sought to do by this amendment, to be a member or knowingly to remain a member of the Communist organization."

Office - Supreme Court, U.S.
FILED
OCT 8 1956
JOHN T. FEY, Clerk

Supreme Court of the United States

October Term, 1956

No. 29-4

CLAUDE MACK LIGHTFOOT,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY BRIEF FOR PETITIONER

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,

INDEX

	PAGE
I. The Insufficiency of the Evidence	1
II. The Unconstitutionality of the Statute	6
A. Face Invalidity	6
B. Application	10
III. The Failure of the Trial Court to Inspect Brzek's Report to the F.B.I.	11
IV. The Erroneous Admission of Evidence	11
A. The Lautner Testimony	11
B. The Meyer Testimony	13
C. The "Classical" Literature	13
V. The Erroneous Instruction that the Teaching and Advocacy Alleged in the Indictment Refers to that of the Communist Party as an Entity and not to that of Its Members Individually	14
VI. The Effect of Section 4(f) of the Internal Security Act	15
VII. The Effect of the Findings of the Communist Control Act	16

Cases Cited

American Communications Association v. Douds, 339 U. S. 382	8
Burns v. United States, 274 U. S. 328	4
De Jonge v. Oregon, 299 U. S. 353	9, 11
Dennis v. United States, 341 U. S. 494	7

PAGE

Fiske v. Kansas, 274 U. S. 380 4

Herndon v. Lowry, 301 U. S. 242 ..... 6, 9, 11

Kammann v. United States, 259 F. 192 13

Mesarosh v. United States, No. 20, this Term 11

Scales v. United States, No. 29, this Term 6

Schneiderman v. United States, 320 U. S. 118 ..... 6, 13

United States v. Dennis, 183 F. 2d 201 13

United States v. Flynn, 216 F. 2d 354 11

Whitney v. California, 274 U. S. 357 ..... 9, 11

Statutes Cited

Communist Control Act 16

Internal Security Act 15

Miscellaneous Citations

Chaffee, Free Speech in the United States (1946 ed.) 8

Webster, International Dictionary 7

Supreme Court of the United States

October Term, 1956

No. 32

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY BRIEF FOR PETITIONER

I. The Insufficiency of the Evidence.

We showed in our principal brief that although the evidence spanned nineteen years of petitioner's membership in the Communist Party and established that he had taught in many Communist Party schools, participated in a long series of Communist Party meetings and conventions, engaged in innumerable private conversations with or in the presence of prosecution witnesses, and written extensively on the subject of Communism, the respondent could produce no evidence that he had ever said, written or done anything to advocate the violent overthrow of the government or to manifest an opinion or belief that the Communist Party engaged in such advocacy. Much less was there evidence that petitioner personally intended to bring about the violent overthrow of the government "as soon as circumstances would permit" or at any other time (Pet. Br. 8-13, 31-34, 41-43).

Respondent's counter-statement of the evidence concerning the petitioner's own acts and declarations, in the main,

confirms our assertion. Respondent, however, resorts to three devices in an attempt to squeeze evidence of guilt from a barren record.

First, respondent presents a doctored version of the Brzek "bloodshed" story upon which it heavily relies. It says that in the Ivanhoe School lecture which was the subject of Brzek's testimony, petitioner "discussed the necessity of using bloodshed to obtain the objectives of the Party", and "because bloodshed is a pre-condition of the successful revolution, he emphasized that bloodshed was on the agenda" (Respt. Br. 16). These damaging words were not those of the witness (R. 461-62). but have been supplied by the respondent.[1] Our principal brief demonstrated that, if intelligible and credible, the Brzek testimony, far from establishing that petitioner advocated violence for any purpose, shows that he urged its avoidance (Pet. Br. 33-34). Unable to counter our analysis, respondent adopts the expedient of misstating the testimony.

Second, respondent excises two articles written by the petitioner to give them a significance which the full texts negative. Thus, respondent documents its statement that petitioner urged use of "the most effective tactics in effecting the ultimate aims of Marxism Leninism" with an excerpt from a 1951 article in which petitioner recalled that the Communist Party of the Soviet Union took power eight months after emerging from illegality and that the Communist Parties of Italy and France won leadership of the working class of those countries in the underground partisan movement (Respt. Br. 20). But respondent suppresses the paragraphs of the article which immediately follow this statement (G. Ex. 54, p. 7):[2] .

---

[1] Respondent indulges in another and similar distortion of the Brzek testimony in the appendix to its brief (Respt. Br. 59).

[2] These paragraphs are not included in the printed rceord but appear in the exhibit which is a part of the record in the court below. Petitioner quoted them in his reply brief below (p. 3).

> "*I do not want to draw any mechanical comparisons*, but the fact remains that history shows that Communist Parties can expand their ties with the people even under the most extreme terror and persecution by the enemy.
>
> "We do not yet have fascism in America, although there are strong tendencies in that direction. And if our brother parties were able, under conditions of outright fascism, *to master the problem of work among the people, then our Party in the United States can undoubtedly do likewise* under relatively more favorable circumstances." (Emphasis supplied.)

Again, respondent quotes a paragraph from a second article by petitioner in which he wrote, "We cannot carry out these responsibilities unless we achieve a greater knowledge of Marxist-Leninist and Stalinist teachings on the National Question" (Respt. Br. 20). The nature of the "responsibilities" to which petitioner referred does not appear from respondent's excerpt but, as in the previous instance, respondent would have the Court believe that they relate to "effecting the ultimate aims of Marxism-Leninism" (*ibid.*). However, as is made plain by the sentence which immediately precedes the portion of the article quoted by respondent, petitioner was discussing "responsibilities" of an entirely different character. For he wrote, "If the working class in general must be won for Negro-white unity, then our Party has a great responsibility" (R. 375).

Third, respondent documents its charge that petitioner engaged in sinister activities by references either to the foregoing distortions in its statement of the evidence or to conduct which is patently innocent. Thus, respondent asserts that petitioner "repeatedly endorsed and enjoined upon others the Party principles of military discipline and preparation for violence" (Respt. Br. 31). For the documentation of this assertion, respondent refers the Court:

(1) to respondent's embroidered version of the Brzek testimony (Respt. Br. 14-16); (2) to respondent's excision of the two articles of petitioner discussed above (Respt. Br. 20); (3) to two speeches in which petitioner is alleged to have said that the Russian Revolution succeeded "under the wise leadership of Lenin and Stalin" (Respt. Br. 13, 18);[3] (4) to a speech in which petitioner likened the Communists to David and their enemies to Goliath (Respt. Br. 19), and (5) to the fact that at the conclusion of a meeting petitioner asked those present to rise and sing the Internationale (*ibid.*). Surely, neither the distortions nor the trivialities can substitute for proof.

Our principal brief showed not only that the prosecution had failed to prove guilty knowledge or intent, but that the uncontradicted evidence (including the testimony of respondent's own "expert") conclusively establishes, for the purpose of this case, that the Communist Party advocated a peaceful path to socialism, and hence affirmatively demonstrates that petitioner is innocent (Pet. Br. 35-37).[4]

Respondent devotes an appendix to its brief to an attempted demonstration that the evidence establishes that

---

[3] Respondent misstates the testimony concerning one of these speeches by attributing to petitioner the nonsensical statement that, "here in this country the revolutionary movement had not succeeded" in 1917-1921 (Respt. Br. 13). What the witness in fact quoted petitioner as saying was that in 1917-1921 "the revolutionary movement did not succeed in all movements [sic]," obviously referring to countries like Hungary where an attempted revolution was defeated (Pet. Br. 93; R. 348).

[4] Respondent urges that courts on other records in other Smith Act cases have found that the Communist Party engaged in the proscribed advocacy. But *this* case must be decided on *this* record. Cf. *Fiske* v. *Kansas*, 274 U. S. 380 and *Burns* v. *United States*, 274 U. S. 328, where the Court, at the same term, reached mutually contrary conclusions concerning the advocacy of the I.W.W. because of differences in the character of the evidence offered in the two cases.

the Communist Party advocated proscribed doctrine. An examination of this appendix shows that, apart from quotations from the works of Lenin and Stalin written thirty or more years ago (Respt. Br. 51-54) and the embroidered version of Brzek's tale which we have already disposed of (Respt. Br. 59), there is only one reference to force or violence in the entire document. This is contained in a statement attributed to Lautner that "strategy is always directed toward the forcible overthrow and destruction of the present 'Imperialist' Government and its replacement by the 'dictatorship of the proletariat'" (Respt. Br. 56). The attribution of this statement to Lautner is a pure invention of respondent, as its own documentation (R. 296-99) reveals. What Lautner said—and all that he said—in defining what Communists mean by "strategy" was that it "is to muster those forces in society that will bring about a fundamental change in society in relation to the economic structure and the upper structures in society" (R. 297).

This is a far cry from advocating force and violence. It is perfectly consistent with the testimony of the same witness that the Communist Party advocated a peaceful advance to socialism by elections and parliamentary methods, and foresaw the possibility of violence only if the trusts and monopolies resorted to violent means to prevent effectuation of the popular will (Pet. Br. 35-36; R. 281).

The foregoing analysis of respondent's presentation of the evidence confirms the thesis of our principal brief (pp. 7-8, 34-35) that the case against petitioner rests on nothing but an elaborate and tenuous series of inferences from respondent's interpretation of the teachings of the "classical" Communist literature. As we have shown (Pet. Br. 34-37), these inferences are flatly refuted by Lautner's acknowledgment that the advocacy of the Communist Party was peaceable and by the constitution of the organization and Foster's *History* which contain the

only statements in the entire record by the American Communist Party, its leaders or members, concerning the means advocated for the achievement of socialism in this country.

We further showed (Pet. Br. 37-41) that even had there been no countervailing evidence, petitioner could not be deprived of his liberty on the basis of the specious deductive logic which is all that respondent can adduce against him. *Schneiderman* v. *United States*, 320 U. S. 118, decided this issue squarely against respondent.

Having no answer to *Schneiderman*, respondent discreetly ignores its existence. However, respondent's own statement of the grounds upon which *Herndon* v. *Lowry*, 301 U. S. 242, was decided (Scales Br. 44, n. 26)[5] demonstrates that petitioner cannot constitutionally be convicted on the evidence in this record. The evidence against Herndon went beyond that offered here. For in addition to showing his membership and extensive activity in the Communist Party, it established his possession of a current document issued by the organization which the Court found might be said to advocate revolutionary violence at some future time. But the Court refused to impute this advocacy to the defendant and, as respondent points out (*ibid.*), reversed the conviction for lack of proof that the defendant "had urged or even approved those of the Party's aims which were unlawful."

II. The Unconstitutionality of the Statute.

A. Face Invalidity.[6]

Respondent makes no attempt to defend the membership clause as written. Instead it re-writes the clause and urges the constitutionality of a non-existent law. Respondent's

---

[5] We so designate respondent's brief in *Scales* v. *United States*, No. 29, this Term.

[6] Respondent's discussion of this issue is contained in its brief in *Scales* v. *United States*, *supra*.

hypothetical statute differs from the one which Congress enacted in two vital respects.

First, respondent amends the membership clause by making the specific intent to overthrow the government "as speedily as circumstances will permit" an element of the offense (Scales Br. 39-41). Respondent ignores our demonstration, from a comparison of the advocacy, organizing and literature distribution provisions of the Smith Act with the membership clause, that the omission of intent from the latter was deliberate (Pet. Br. 47-48). It concedes (Scales Br. 40) that, as we showed (Pet. Br. 46-47), the nexus between act and intent which led the Court in *Dennis* v. *United States*, 341 U. S. 494, 499, to import a specific intent into the advocacy and organizing provisions of the Act does not exist in the case of the membership clause. But it dismisses this decisive difference and the principle that criminal statutes must be strictly construed as "a perverse insistence on finding constitutional infirmities" (Scales Br. 40). But epithet is no substitute for analysis, and respondent offers no better reason for its position than a desire to sustain the statute.

Second, respondent surrounds the term "member" with a long series of characterizations and qualifications entirely alien to the well understood meaning of this familiar term.[7] Thus, the membership must be "active", entailing "rigidly disciplined adherence to and labors for the organization's unlawful objectives", and "tightly disciplined, quasi-military, deeply conspiratorial activities" (Scales Br. 41, 45). Of course, there is not the slightest warrant for such a reading, and respondent tacitly acknowledges that, without it, the statute is invalid because it imputes guilt solely from association, unaccompanied by any overt act of wrong-

---

[7] "A person considered in relation to any aggregate of individuals to which he belongs." Webster, *International Dictionary*.

doing, and violates the clear and present danger test (Pet. Br. 49-53, 54-56).[8]

Furthermore, respondent's thesis requires the Court to usurp the function of the jury as well as that of Congress. For if "membership" connotes all that respondent now claims for the term, petitioner was entitled to have the jury determine, under appropriate instructions, whether he was a member of the peculiar kind respondent now says the statute punishes. Thus, even if respondent's esoteric conception of "membership" could somehow find acceptance, a reversal of the conviction would still be necessary.

We turn to respondent's discussion of the authorities.

Respondent leans heavily on Mr. Justice Jackson's characterization of the Communist Party in his partial concurrence in *American Communications Association* v. *Douds*, 339 U. S. 382, 422 (Scales Br. 36, 42). But it ignores those portions of the same opinion (at 434) which demonstrate

---

[8] Similarly, respondent urges the reasonableness of its hypothetical statute instead of addressing itself to the membership clause as enacted. Respondent depicts the dangers, during an atomic war, from "highly disciplined, tightly organized adherents whose doctrines are ideologically attuned to the aggressor nation and who have been located in key positions for revolutionary purposes," are adept at "infiltration into strategic places," and have demonstrated "readiness to aid a foreign power" (Scales Br. 38). These considerations might well be pertinent to the validity of statutes condemning treason, sabotage, conspiracies to overthrow the government and the like. But they cannot justify the membership clause which requires no proof of conduct of the sort respondent so luridly describes or, indeed, of any conduct whatsoever beyond the bare act of association. The fact is, as Professor Chaffee has written, that, "The provisions of section 2 [of the Smith Act] never received a favorable report from any committee of the Seventy-Sixth Congress that had subjected them to the test of a public hearing. Not a spark of evidence was introduced in Committee or in Congress to show any more need for such a federal statute now than in 1920. No proof was offered of any evil which had to be remedied by the unprecedented provisions of section 2." *Free Speech in the United States* (1946 ed.), p. 463.

that, despite the author's bitter hostility to Communism, he regarded legislation which prohibits an individual from being or becoming "a full fledged member of the Party" and "engaging in above board political activity" as unconstitutional. Likewise ignored is the majority opinion in *Douds* which, as we showed in our principal brief (pp. 52-53), similarly foreshadowed the invalidity of the membership clause.

Respondent's own statement of *Herndon* v. *Lowry* demonstrates that it is controlling here (Scales Br. 44, n. 26). For the membership clause, like the Georgia statute, requires no proof that the accused "urged or even approved those of the Party's aims which were unlawful."

Respondent reads *De Jonge* v. *Oregon*, 299 U. S. 353, too narrowly (Scales Br. 44, n. 26). The decision did not turn on the fact that the statute reached persons who were not members of the Communist Party. For Mr. Justice Hughes explicitly stated (at 365) that,

> "The question, if the rights of free speech and peaceable assembly are to be preserved, is * * * not as to the relations of the speakers, but whether their utterances transcend the bounds of the freedom of speech which the Constitution protects."

Thus, the essence of the decision (reiterated in *Herndon*) is that men may not be punished for their relations or association with a "bad" organization, but only for their own personal acts of wrongdoing.

Respondent seems to rely on the majority opinion in *Whitney* v. *California*, 274 U. S. 357, for the proposition that the offense defined in the membership clause "partakes of the nature of a conspiracy" and is punishable as such (Scales Br. 46). But Mr. Justice Sanford was speaking of the *organizing*, not the membership provision of the California statute in the passage which respondent quotes.

This reading is clear from the opinion and was adopted by the Court in *De Jonge* (at 363) where the *Whitney* decision was described as one in which "the defendant was found guilty of wilfully and deliberately assisting in the forming of an organization for the purpose of carrying on a revolutionary class struggle by criminal methods." Moreover, Mr. Justice Brandeis' weighty concurrence (at 372-73) characterizes both the organizing and membership provisions of the statute as creating "a crime very unlike the old felony of conspiracy or the old misdemeanor of unlawful assembly."

B. Application.

Respondent concedes that there was no evidence that petitioner engaged in the advocacy of violence during the three years' preceding the indictment, and its own summary of his conduct during that period shows nothing but peaceable activity and constitutionally protected expression (Respt. Br. 36).[9] Nevertheless, respondent urges that petitioner may lawfully be convicted because the activities of the organization to which he belonged presented a clear and present danger (Respt. Br. 36-37).

Respondent misconceives the nature of the issue under the clear and present danger test as applied to the membership clause. The fact—if it had been established—that the organization engaged in advocacy creative of a danger [10] would be relevant to the constitutional application of a statute punishing the organization. But the membership clause punishes individuals, not organizations. The issue here, therefore, is whether the conduct *of petitioner* gave rise to a danger. The mere fact of his membership and officership, unaccompanied by illegal advocacy or by

---

[9] As we have shown, petitioner's conduct in prior years was similarly devoid of illicit acts or advocacy.

[10] As we have seen, upon the evidence in this record, the advocacy of the Communist Party was as innocent as that of petitioner.

conduct which amounts to aiding and abetting the criminal purpose of the organization cannot be dangerous under any circumstances. This is the essence of the decisions in the *De Jonge* and *Herndon* cases and of Mr. Justice Brandeis' concurrence in *Whitney*.

Respondent begrudgingly concedes that at and since the time of the indictment there has been a relaxation of international tensions and a hopeful outlook for the preservation of peace (Rospt. Br. 37). Respondent's reliance on the reference to the Korean War in *United States* v. *Flynn*, 216 F. 2d 354, 367, quoted in our principal brief (p. 58, n. 38), is therefore faulty. For, as we have shown (Pet. Br. 57, 58) it is the international setting existing at the date when the indictment was returned which must be considered in determining whether the conduct of the petitioner gave rise to a danger.

III. The Failure of the Trial Court to Inspect Brzek's Report to the F.B.I.

It is only necessary to add to what was said in our principal brief (pp. 61-66) that the Solicitor General's motion to remand in *Mesarosh* v. *United States*, No. 20, this Term, serves to emphasize that trial court inspection of the relevant reports of F. B. I. informers is a minimum precaution required to safeguard the administration of justice against the use of tainted testimony.

IV. The Erroneous Admission of Evidence.

A. The Lautner Testimony.

As we understand respondent's contention (Respt. Br. 42), it is that the prosecution may separate its evidence as to guilty knowledge into two air-tight compartments. Compartment A is for evidence that petitioner had the opportunity or occasion to become familiar with the purposes of the organization, irrespective of "what those purposes actually

were." Compartment B is for evidence, wholly unconnected with petitioner, that in fact one of the purposes of the organization was criminal. Respondent seems to argue that the evidence in compartment B is relevant because, coupled with the evidence in compartment A, it raises an inference that petitioner had knowledge of the criminal purpose.

Respondent's contention is fallacious. The knowledge with which the statute is concerned is not that of some simple physical condition like the weather, evidence of mere exposure to which gives rise to an inference that the accused knew it was bad. Petitioner could acquire knowledge that one of the purposes of the organization was illegal only by hearing or reading a statement to that effect by or on behalf of the organization. The fact that Lautner might have concluded from his own personal experience, not shared by petitioner, that the organization had a bad purpose [11] would not have the slightest tendency to prove that petitioner must have reached the same conclusion from his different experience.[12]

Respondent argues that the Lautner testimony was competent because, "The question was not whether these doctrines and purposes were 'true,' but what they were" (Respt. Br. 42). Respondent misstates the question. The issue was not what the purposes were, but whether petitioner *knew* what they were. On that issue, the statements or opinions of third parties, uncommunicated to petitioner, were plainly incompetent as hearsay.

---

[11] Although Lautner did not so testify, his testimony was prejudicial nonetheless (Pet. Br. 70-71).

[12] Respondent makes the preposterous suggestion that Lautner's opinion testimony was relevant because of the "close parallel between his career in the Party and petitioner's" (Respt. Br. 41).

B. The Meyer Testimony.

It is true as respondent says (Respt. Br. 43) that a small portion of Meyer's testimony related to events subsequent to the enactment of the Smith Act. But the crucial and damaging portion of his testimony which laid the foundation for the introduction of the "classics" related to conversations with petitioner prior to the passage of the Act (see Pet. Br. 71-72). Respondent relies on *United States* v. *Dennis*, 183 F. 2d 201, for the admissibility of this testimony (Respt. Br. 44). But it disregards *Kammann* v. *United States*, 259 F. 192, which is controlling here as well as the fact that the Court in *Dennis* expressed its agreement with the holding in that case (see Pet. Br. 72-73).

C. The "Classical" Literature.

Respondent argues that there was a foundation for the introduction of the excerpts from the "classics" apart from the testimony of Meyer and Lautner (Respt. Br. 45). But since Meyer supplied the only evidence that petitioner was familiar with the excerpts offered in evidence (Pet. Br. 74), his testimony alone established their competence.

We urged in our principal brief (p. 74) that the excerpts should have been excluded as irrelevant because there was no evidence as to how petitioner (or for that matter, the Communist Party) interpreted or taught from them or what he (or it) believed their application to be to current conditions in the United States. Respondent points out that the same writings were admitted in the *Schneiderman* case, *supra*. In *Schneiderman*, however, not only does there appear to have been no objection to the admission of the writings, but Schneiderman himself introduced expert testimony with reference to them. See, *Schneiderman* v. *United States*, *supra*, at 129.

V. The Erroneous Instruction that the Teaching and Advocacy Alleged in the Indictment Refers to that of the Communist Party as an Entity and not to that of Its Members Individually.

Contrary to respondent's suggestion (Respt. Br. 47), conspiracies to violate the organizing and advocacy provisions of the Smith Act are not affected by the literal reading of the membership clause for which petitioner contends. The advocacy provision requires proof of advocacy (or a conspiracy to advocate) by the defendants themselves, so that the question whether a substantial number of the members of the Communist Party individually engaged in the proscribed advocacy does not arise. And where the charge is for conspiracy to organize, it is the nature of the *agreement* among the defendants that is determinative and not whether, in fact, members of the organization advocated prescribed doctrine, personally or vicariously.

The fact that brief and uninformative committee reports, obviously prepared in haste, used an inaccurate short-hand expression to describe the provisions of the membership clause (Respt. Br. 47-48) carries no weight in the light of the plain terms of the statute and the provisions of other legislation in *pari materia* with the membership clause (see Pet. Br. 75-76).

VI. The Effect of Section 4(f) of the Internal Security Act.[13]

Respondent concedes that the reference in Section 4(f) to "any other criminal statute" was drafted with the Smith Act in mind (Scales Br. 54). The question that remains is: What did Congress have in mind with respect to that Act? As we showed in our principal brief (pp. 77-80) the answer is supplied by logic and the legislative history. Both establish that Congress believed that the privilege against self-incrimination precluded the compulsory registration of Communist Party members so long as they remained subject to prosecution under the membership clause. Accordingly, in order to make registration enforceable, Congress immunized Communist Party members, whose only overt act was that of membership, from prosecution under the Smith Act.

Respondent attempts a different answer. It says that the reference to "any other criminal statute" was intended only as an aid to interpretation of the membership clause, *i.e.*, as a kind of warning to the courts against the conviction of Communist Party members without proof of guilty knowledge (Scales Br. 54-55).

Respondent's answer wars with logic. The courts were in no need of an interpretive guide to the membership clause. Its terms are simple and state as plainly as words can that knowledge of the proscribed purpose is an element of the offense. Moreover, respondent's answer contradicts the legislative history. For the members of Congress who were responsible for writing the reference to "any other criminal statute" into Section 4(f) did not urge this phrase as an aid to the interpretation of the Smith Act. Instead, they said clearly and explicity that immunity from prosecution under the membership clause was necessary to make

[13] Respondent's discussion of this issue and of the effect of the findings of the Communist Control Act on petitioner's right to a fair trial is contained in its brief in the *Scales* case, *supra*.

registration enforceable against members of the Communist Party (Pet. Br. 79-80).

Respondent misstates the effect of the Humphrey amendment to the Communist Control Act when its says that in defeating it, "Congress merely refrained from imposing a criminal sanction on membership alone" (Scales Br. 56, n. 29). The criminal sanction of the Humphrey amendment was not on "membership alone," but only on membership accompanied by knowledge of the Communist Party's alleged criminal purpose—the same offense charged in the indictment here (see Pet. Br. 81).

VII. The Effect of the Findings of the Communist Control Act.

We wish only to correct what may be a false impression from respondent's brief in *Scales* (p. 77) that petitioner raised this issue for the first time in this Court. In fact, he raised it by motion to dismiss the indictment (R. 7) and reasserted it in the Court of Appeals (R. 632).

Respectfully submitted,

JOHN J. ABT,
11 Park Place,
New York 7, N. Y.,
Attorney for Petitioner.

Supreme Court of the United States

October Term, 1957

No. 4

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY MEMORANDUM FOR PETITIONER ON REARGUMENT

JOHN J. ABT,
320 Broadway,
New York 7, N. Y.,
Attorney for Petitioner.

INDEX

	PAGE
1. The constitutional issue	1
2. The applicability of *Yates* v. *United States*	4

Cases Cited

American Communications Association v. Douds, 339 U. S. 382	3
De Jonge v. Oregon, 299 U. S. 353	3
Dennis v. United States, 341 U. S. 494	4
Herndon v. Lowry, 301 U. S. 242	3
Konigsberg v. State Bar, 353 U. S. 252	3
Schware v. Board of Bar Examiners, 353 U. S. 232	3
Whitney v. California, 247 U. S. 357	3
Yates v. United States, 354 U. S. 298	1, 4, 5

Supreme Court of the United States

October Term, 1957

No. 4

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

REPLY MEMORANDUM FOR PETITIONER ON REARGUMENT

It is the purpose of this memorandum (1) to reply to respondent's Supplemental Memorandum [1] on the constitutional issue and (2) to demonstrate that *Yates* v. *United States*, 354 U. S. 298, requires an order for petitioner's acquittal.

1. The constitutional issue.

The respondent now concedes (Supp. Mem., 4-5) what was implicit in its earlier argument—that the membership clause, as written, is unconstitutional even if a specific intent to accomplish violent overthrow can be imported into the statute as an element of the offense.[2]

---

[1] We refer to respondent's Supplemental Memorandum as "Supp. Mem.," the Brief for Petitioner as "Pet. Br.," the Brief for Respondent as "Resp. Br.," and the Reply Brief for Petitioner as "Pet. Rep. Br."

[2] Our principal brief so contended (Pet. Br. 48-54), and as we there showed (pp. 45-48) there is no warrant for reading a specific intent into the membership clause.

Nevertheless, respondent urges (Supp. Mem., 3-4) that the statute can be saved by limiting its application to persons who are "active" members of an organization which engages in the proscribed advocacy. Respondent defines an "active" member (Supp. Mem., 6) as one "who devote[s] all or a substantial part of his time and efforts towards carrying on the work of the organization to which he belongs and furthering its ends."

Respondent does not and cannot find any justification for this elaborate qualification of the familiar term, "member," in the language of the statute or in the legislative history. Respondent seems to suggest (Supp. Mem., 4) that these guides to statutory construction can be dispensed with by labelling the qualification "an external constitutional limitation on the validity of convictions under the Act" and not an element of the offense.[3] On this preposterous theory, no legislation can be invalidated for inherent unconstitutionality. For, if respondent is right, the courts are obliged to rescue an invalid statute by supplying the requisite "external constitutional limitations" without regard to the text of the law or other indicia of legislative intent.

Furthermore, respondent's reading of the term, "member," even if warranted, would not save the membership clause.

As we have shown (Pet. Br., 48-54; Pet. Rep. Br., 8-10), the membership clause is invalid because it violates the First Amendment principle that guilt may not be imputed solely from association, unaccompanied by any personal act of wrongdoing. The constitutional issue, therefore, is not whether the membership denounced by the statute is "active" or "passive." The issue is whether the statute

[3] Respondent does not bother to explain why the specific intent which it reads into the membership clause *is* an element of the offense while the "factor of 'activity,'" which it also supplies, is not.

authorizes a conviction without proof that an accused member has engaged in *unlawful activity*—i.e. activity that amounts to aiding and abetting, or conspiring to aid and abet, the unlawful advocacy of the organization. Unless the statute requires such proof, it is unconstitutional because it attaches criminality to the mere act of association. *De Jonge* v. *Oregon*, 299 U. S. 353; *Herndon* v. *Lowry*, 301 U. S. 242; *Whitney* v. *California*, 247 U. S. 357, 372 (concurring opinion); *American Communications Association* v. *Douds*, 339 U. S. 382. Cf. *Schware* v. *Board of Bar Examiners*, 353 U. S. 232; *Konigsberg* v. *State Bar*, 353 U. S. 252.

Respondent's proposed application of the statute, however, permits a conviction on proof that the member engaged in nothing but innocent and, indeed, constitutionally protected activity. For, under respondent's definition of an "active" member (Supp. Mem., 6) it is enough that the member be shown to have devoted a substantial part of his time to "the work of the organization" and "furthering its ends." Obviously, an organization that advocates the violent overthrow of the government "as soon as circumstances permit" may have perfectly lawful intermediate goals for which it works. For example, whatever may be found to be the ultimate objective of the Communist Party, it cannot be denied that the day-to-day policies and activities of the organization are directed toward the realization of legitimate popular demands for reform. Yet, under respondent's theory of the statute, a member may be convicted upon proof that he devotes a substantial part of his time to these innocent activities. Obviously, if —as respondent concedes—a "passive" member may not constitutionally be convicted, there can be no warrant in the Constitution for the conviction of a member whose only organizational activity consists in advocating the peaceful implementation of this Court's decisions on racial integration.

Plainly, therefore, the limitation on the application of the membership clause which respondent proposes cannot save its constitutionality.

Respondent carefully refrains from suggesting that the application of the membership clause should be limited to members who are "active" in advocating violent overthrow or in aiding and abetting, or conspiring to aid and abet, the advocacy of political violence by the organization. Under *Dennis* v. *United States*, 341 U. S. 494, a statute so limited would be constitutional. But as respondent seems to recognize, Congress could not possibly have intended to give the membership clause so restrictive an application. For, so limited, the clause would be wholly redundant.[4] The advocacy provisions of the Smith Act and the general conspiracy statute are available for the punishment of members who advocate or conspire to advocate the proscribed doctrine.[5] Hence, the membership clause adds nothing to the Act unless it reaches members who are either passive or whose organizational activity is confined to innocent conduct. But so construed—as it must be if regard is had for the plain intent of Congress—the membership clause is unconstitutional.

2. The applicability of *Yates v. United States*.

Petitioner was charged with membership in the Communist Party, knowing that it engaged in the proscribed advocacy. Obviously, petitioner could not "know" that the organization was so engaged if, in fact, it was not. The Government was therefore required to prove, as the

---

[4] It would also require petitioner's acquittal. For respondent concedes (Resp. Br., 36) that there was no evidence of proscribed advocacy by or in the presence of petitioner during the three years prior to the return of the indictment.

[5] The Government has tried the Smith Act conspiracy cases on the theory that the Communist Party was the conspiratorial group. See, e.g., *Yates* v. *United States*, *supra*, at 329.

foundation for its case, that the Communist Party advocated violent overthrow, and did so in language calculated to incite persons to action.[6]

The evidence offered by the Government on this phase of the case consisted of (1) excerpts from the Marxist "classics" and (2) the opinion testimony of Lautner (Pet. Br., 35-41; Pet. Rep. Br., 4-5; Resp. Br., 50ff). The excerpts from the classical literature were identical with those held insufficient in *Yates* (at 327, 329-30), and Lautner testified that the Communist Party advocated a peaceful path to socialism (Pet. Br., 35-36; Pet. Rep. Br., 5).

Yates held, on far more detailed and elaborate evidence concerning the Communist Party than is contained in the present record, that there was no proof that the organization engaged in incitement to revolutionary violence. That decision confirms our contention that the evidence in this case relating to the advocacy of the Communist Party affirmatively establishes petitioner's innocence (see Pet. Br., 44; Pet. Rep., Br., 4-6).

In contradistinction to *Yates* (see p. 328), the Government was under no misapprehension here as to the burden cast upon it by the statute under which the indictment was laid. And since the evidence against petitioner "would be palpably insufficient on a new trial" (*ibid.*), the decision in *Yates* requires an order for petitioner's acquittal.

Respectfully submitted,

JOHN J. ABT,
320 Broadway,
New York 7, N. Y.,
Attorney for Petitioner.

---

[6] The trial court so instructed the jury (Pet. Br., 5).

INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	1
Statutes involved	3
Statement	3
Argument	14
Conclusion	29

CITATIONS

Cases:

Frankfeld v. *United States*, 198 F. 2d 679, certiorari denied, 344 U. S. 922 — 6, 20, 23, 24

Galvan v. *Press*, 347 U. S. 522 — 20

Goldman v. *United States*, 316 U. S. 129 — 21, 22

Gordon v. *United States*, 344 U. S. 414 — 21, 22

Scales, v. *United States*, 227 F. 2d 581, pending on petition for a writ of certiorari, No. 626, this Term — 3, 18, 23, 27, 29

Schneiderman v. *United States*, 320 U. S. 118 — 14, 15

United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U. S. 494 — 6, 17–21, 24, 26

United States v. *Flynn*, 216 F. 2d 354, certiorari denied, 348 U. S. 909 — 6, 20, 24

Statutes:

Communist Control Act of 1954, 50 U. S. C. 841 ff:

Sec. 2 — 2, 3, 28

Sec. 3 — 3, 28

Sec. 4 — 3, 28

Internal Security Act of 1950, 50 U. S. C. 781 ff:

Sec. 4 (f) — 2, 3, 26

Sec. 17 — 3, 27

Smith Act, 18 U. S. C. 2385 — 2, 3

Miscellaneous:

96 Cong. Rec. 14175, 15198 — 27

100 Cong. Rec. 15102–15110 — 27

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 661

CLAUDE MACK LIGHTFOOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 37) has not yet been officially reported.

JURISDICTION

The judgment of the court below was entered on January 12, 1956. The petition for a writ of certiorari was filed in February, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence was sufficient to support the verdict.

2. Whether the "membership" clause of the Smith Act (18 U. S. C. 2385) is unconstitutional on its face or as applied to the facts of this case.

3. Whether the trial court properly denied petitioner's motion to require the Government to produce a written report made to the Federal Bureau of Investigation by a prosecution witness concerning a matter about which the witness had testified.

4. Whether certain evidence was admissible.

5. Whether the trial court properly construed the "membership" clause of the Smith Act in instructing the jury that the teaching and advocacy alleged in the indictment refers to the teaching and advocacy of the Communist Party as an entity rather than requiring the jury to determine that a majority of the Communist Party members individually so taught and advocated.

6. Whether Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)), which provides in part that "[n]either the holding of office nor membership in any Communist organization by any person shall constitute *per se* a violation" of that or any other criminal statute, bars prosecution of the offense charged in the indictment.

7. Whether the Congressional legislative findings in the Communist Control Act of 1954 (50 U. S. C. 841 *et seq.*) deprived the petitioner of a fair and impartial trial.

STATUTES INVOLVED

The Smith Act (18 U. S. C. 2385), Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)) and Sections 2, 3, and 4 of the Communist Control Act of 1954 (50 U. S. C. 841–3) are set forth in the appendix to the petition (Pet. App. 54–57). In addition, Section 17 of the Internal Security Act of 1950 (50 U. S. C. 796), which reads as follows, is also involved.

> The foregoing provisions of this title shall be construed as being in addition to and not in modification of existing criminal statutes.

STATEMENT

This case involved the first trial under the "membership" clause of the Smith Act.[1] After a jury trial before Judge Philip L. Sullivan, petitioner was convicted on a one count indictment charging that continuously from about July 26, 1945, up to the date of its filing on May 14, 1954, the Communist Party of the United States was a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; that continuously during this entire period the petitioner was a member of the Communist Party of the United States with knowledge that

[1] The second trial under the "membership" clause of the Smith Act was *Scales* v. *United States*, No. 626, this Term (petition for certiorari filed January 16, 1956).

it did so teach and advocate; and that he intended to bring about such overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

At the time of trial, petitioner admitted he was a member of the Communist Party (Tr. 6),[1] and his counsel conceded that he was both a member and an officer of the Communist Party during the indictment period (Tr. 8, 9).

The Government offered evidence, both documentary and through the witness Lautner,[2] that for a number of years prior to 1944 and from after July 26, 1945, the Communist Party of the United States was an organization dedicated to the principles of Marxism-Leninism, which teach the theory and tactics of the proletarian revolution and the dictatorship of the proletariat (Tr. 432-433, 574, 1159; Gov. Exs. 44, 45). Proof of the revolutionary content of the Marxist-Leninist program readopted by the Communist Party at

[1] "Tr." refers to the typewritten trial transcript.

[2] Lautner joined the Party in 1929 and for the greater part of his Party career, until his expulsion in 1950, was a high-ranking paid functionary. He attended the Party's highest school, the National Training School, in 1930 and 1941 (Tr. 274, 295); was a District Organizer in West Virginia from 1936 to 1940 (Tr. 290-291); taught Party classes from 1946 to 1948 (Tr. 335); attended National Party Conventions in 1936, 1938, 1940, 1942, 1945 and 1948 (Tr. 313); was a member of the National Review Commission from 1948 to 1950 (Tr. 333) and from 1947 to 1950 headed the New York State Review Commission (Tr. 334).

its 1945 National Convention was presented through Lautner who testified that, given certain objective and subjective conditions, the final aim of the Communist Party is the destruction of the existing social order known as "imperialism" and its governments and institutions, including the United States of America, and instituting instead the proletarian revolution and the dictatorship of the proletariat (Tr. 444). Lautner authenticated his testimony by reference to the basic texts used by the Party in promulgating its program (Tr. 433–435, 438–439).* These texts stress that the goal of the Party can be reached only through actual class revolt attendant with violence and bloodshed (Tr. 500–510, 513–519, 524, 544–546). Lautner also testified as to what he was taught at the Party's highest National Training Schools in 1930 and 1941 (Tr. 276, 296–302); what he as a high-ranking Party official taught at supervised classes in 1946, 1947 and 1948 (Tr.

---

* *Foundations of Leninism* (Gov. Ex. 19); *Problems of Leninism* (Gov. Ex. 21); *The History of the Communist Party of the Soviet Union* (Gov. Ex. 22); *State and Revolution* (Gov. Ex. 23); *The Struggle Against Revisionism* (Gov. Ex. 48).

Among the other Marxist-Leninist classics setting forth the revolutionary program of the Party are: *The Communist Manifesto* (Gov. Ex. 18); *Left Wing Communism—An Infantile Disorder* (Gov. Ex. 25); *Strategy and Tactics* (Gov. Ex. 27); *Theory of the Proletarian Revolution* (Gov. Ex. 28). All these socalled "classics" stress the importance of Marxism-Leninism as a guide to action (Tr. 563) and treat openly the subject of force and violence in the establishment of the dictatorship of the proletariat.

335–338); and what texts were used at Party schools and circulated by the Party generally (Tr. 293–294, 299–302, 337–338, 434–436).

On the issue of whether the Communist Party taught and advocated the violent overthrow of the Government throughout the period alleged in the indictment, the testimony of Lautner, coupled with that of the witnesses Meyer, Skinner, Brzek, Ondrejka, Cummings, Herron and Czarnowski and the documentary evidence, was very similar to and in some respects identical with that received in other Smith Act cases, such as *United States* v. *Dennis*, 183 F 2d 201 (C. A. 2), affirmed, 341 U. S. 494; *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922; and *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909.

The evidence disclosed that the petitioner's role in the Party was not that of a minor actor but rather that of a highly trained, well disciplined professional. He had been a member of the Communist Party since at least 1934 and was early a Section Organizer for the Young Communist League and a member of the District Bureau of that League (Tr. 115). Later, he was a Section Organizer and a member of the District Committee of the Illinois-Indiana District of the Party (Tr. 115). In 1936, he was a delegate to the Sixth Congress of the Young Communist International (Tr. 118). He was a paid employee of the Party from as early as 1937 (Tr. 41; Gov.

Ex. 9) and on business and public records which continued through the statutory period he stated himself to be the Executive Secretary of the Illinois State Committee of the Communist Party (Tr. 39–40; Gov. Exs. 2, 5). In 1938, he taught in the Chicago Workers School operated by the Communist Party (Tr. 117), and from 1938 to 1942 he taught in a number of inner Party training schools (Tr. 160). He was elected to the State Board of the Communist Party at the Illinois State Convention in 1945 (Tr. 64). At the 1948 State Convention of the Party, he was appointed as a regional director of a new Party set-up to bring about Communist infiltration in the basic or vital community industries (Tr. 777, 780). In 1950, he was elevated to the position of Member of the National Committee of the Communist Party, a position he held up to the time of the indictment (Tr. 725–726; Gov. Exs. 61, 93).

The corner-stone Party doctrine of "democratic centralism" left no room in the Party for members who might not agree with its program of forceful and violent overthrow of our Government. Party members were bound to accept without question the teachings of the Communist leadership (Tr. 338; Gov. Ex. 55). The evidence, moreover, is abundant that petitioner possessed a thorough understanding of the Party's revolutionary aims and purposes and that he personally had the specific intent to bring them about.

Petitioner's *scienter* is revealed by the testimony of the witness Meyer[5] who was closely connected with petitioner in Party activities from 1934 to 1942 (Tr. 112–113). During a good part of this period, petitioner was a member of the faculty of the Chicago Workers School, of which the witness was a director, and he taught classes on "Marxism-Leninism", "History of the Communist Party of the Soviet Union", "Political Economy and the Negro Question" (Tr. 117, 122, 128). The witness discussed the theoretical content of these courses with petitioner on many occasions (Tr. 134–135) and he checked less on his class instruction than that of other instructors because he was so good (Tr. 128). In order to teach these courses petitioner was, and had to be, recognized by the Party as politically reliable and theoretically skilled in Communist doctrine.

Petitioner used as texts the works referred to *supra*, p. 5, footnote 4. The witness often discussed the contents of these books with petitioner in order to see that the teaching of the school was uniform and correct from the Communist point

[5] Meyer joined the Communist Party of Great Britain in 1931 and later was co-opted to the Central Committee of the Party of Great Britain (Tr. 103–104). He returned to the United States in July 1934 with a transfer to the Communist Party of the United States (Tr. 106–107). In 1938, he became director of the Chicago Workers School and educational director of the Illinois-Indiana District, and in 1941 became assistant organizational secretary of that District (Tr. 116). The witness had no further connection with the Party after 1945.

of view (Tr. 194–200). Petitioner taught not only in the Chicago Workers School, but also in a considerable number of inner Party classes (Tr. 160), as well as in District Training Schools which were full-time Party schools for the purpose of hardening and training leadership in Communist activities (Tr. 160, 163). These schools were taught only by leading Party functionaries who were specializing in Marxism-Leninism (Tr. 164) and were conducted under circumstances which secluded the students and kept them entirely under continuing training pressure (Tr. 161) and in which training went beyond the theories of the classics to include matters relating to the personality of the students and their Party activities (Tr. 162). During the period that Meyer knew him, petitioner was a top leading Party functionary and one of the most theoretically capable people in the Indiana-Illinoise District of the Communist Party (Tr. 165).

The testimony of the other witnesses also showed petitioner's active and knowing membership. Lautner testified that he checked petitioner in as a delegate to the 1948 National Communist Party Convention (Tr. 355–356). Herron[6] testified that he attended a State Convention of the Illinois Communist Party in 1945 at which peti-

[6] Herron joined the Party at the request of the FBI in 1944 and reported on Communist Party activities to that agency until 1947 when he ceased all Party activity after moving away from the Chicago area (Tr. 57, 95).

tioner was elected to the State Board of the Party (Tr. 64).

Ondrejka [7] testified that in about June 1951 he attended a meeting of high Communist Party functionaries in Chicago, including Gil Green, a National Party leader who had recently been convicted in the *Dennis* case, at which petitioner was introduced as an officer of the Communist Party of Illinois (Tr. 676–677). Petitioner at this meeting stressed that the Communists must go into the working class movement and that by doing this they would be following the "Marxian line" (Tr. 676).

Cummings [8] testified that he met petitioner at the 1948 National Convention of the Communist Pary in New York City and that during each session of the Convention which lasted for three days the petitioner occupied the speaker's platform with National Party leaders Eugene Dennis, William Z. Foster and Elizabeth Gurley Flynn (Tr. 950) and chaired one session (Tr. 951).

Skinner [9] testified to attendance at the Abraham Lincoln School in Chicago in 1946 at which she

[7] Ondrejka joined the Party at the request of the FBI in 1949 and later became Educational Director of the Youth Group of the Communist Party in Milwaukee (Tr. 662, 666).

[8] Cummings was a member of the Party from 1943 to 1949 and joined at the request of the FBI. He was a prosecution witness in the *Dennis* case in 1949.

[9] Skinner was a member of the Party from 1946 to January 1948 and during part of that period worked in the District Office of the Communist Party in Chicago (Tr. 971–972).

was taught a course in "Fundamentals of Marxism" by petitioner (Tr. 975). She also testified to attendance at another Party school at Lake Ivanhoe, Wisconsin in 1947 (Tr. 975–976) where petitioner taught classes in "Strategy and Tactics" and "History and Role of the Party." (Tr. 991)

Brzek,[10] like the witness Skinner, attended the Communist Party full time school at Lake Ivanhoe, Wisconsin in July 1947 at which petitioner taught courses in "Strategy and Tactics" and "History and Role of the Party" (Tr. 991; Gov. Ex. 54). In connection with these courses, petitioner used a pamphlet entitled "Democratic Centralism" (Tr. 991; Gov. Ex. 55) and a copy of "The History of the Communist Party of the Soviet Union" (Tr. 992; Gov. Ex. 56). In these classes petitioner spoke on the Russian Revolution (Tr. 995), Communist Party discipline (Tr. 997) and in conclusion stated "If we have to spill blood we will" (Tr. 1000).

Czarnowski[11] testified that he knew petitioner as a member of the State Committee, Regional

[10] Brzek was a member of the Party in Milwaukee, Wisconsin from 1943 to 1947 and joined at the request of the FBI (Tr. 980).

[11] Czarnowski joined the Party at the request of the FBI in 1943 and reported to that agency on Communist activities in the Chicago area until he appeared in court as a Government witness against petitioner. He met petitioner in late 1945 at a closed Party meeting in Chicago (Tr. 753–754) and attended numerous other Party functions with him until June 1951 (Tr. 755, 758, 760, 761, 764, 770, 772, 783, 786, 805).

Director of Industrial Concentration and a member of the National Committee of the Communist Party (Tr. 691). At a meeting of the Southwest Section of the Communist Party in Chicago soon after the reconstitution of the Party, petitioner spoke in praise of the success of the Russian Revolution under the leadership of Lenin and Stalin (Tr. 756). Again at a Party meeting in the Ashland Auditorium in Chicago in 1947, petitioner spoke about his experiences before the Illinois Legislative Committee investigating subversive activities, and, consistent with the principles of "democratic centralism," promised protective secrecy for the Party records (Tr. 760). At this same assembly he advised the membership on the use of the underground (Tr. 761).

On November 10, 1950, petitioner delivered the principal address at a Communist meeting held to celebrate the 33rd Anniversary of the Russian Revolution (Tr. 785–791; Gov. Ex. 63). On May 26, 1951, he accepted congratulations of other Party members for his having been elevated to the National Committee (Tr. 729; Gov. Ex. 61). On June 11, 1951, in Forum Hall, Chicago, petitioner addressed a Party meeting at which he assured those present that in the end they would win against their enemies, and in which meeting he had members stand and led them in singing the "Internationale" (Tr. 807–808).

Petitioner continued his active membership and held high office in the Communist Party on

into and through the three year period prior to the indictment (Tr. 672, 729, 806; Gov. Exs. 1–5, 59, 61, 64, 66). The record contains several instances where petitioner contributed articles to Party publications, stressing the importance of the "classics." These writings emphasize that the Party's educational work is not mere study for the sake of study but is aimed at equipping the membership with knowledge and experience to adopt the most effective tactics in effecting the ultimate aims of Marxism-Leninism [12] (Gov. Exs. 57, 58, 59, 60, 63, 64, 66).

---

[12] *E. g.:* (1) In the December 1951 edition of "Party Forum," petitioner stated (Tr. 815; Gov. Ex. 64):

"We cannot carry out these responsibilities unless we achieve a greater knowledge of the Marxist, Leninist and Stalinist teachings on the National Question. I refer to such classic works as 'Marxism and the National Colonial Question' by J. Stalin, the 'National Question' in 'Foundations of Leninism' and the 'History of the CPSU'. These works together with the new experiences that have been generated by the Chinese revolution and reflected in the works of Mao Tse Tung and Liu Shao-Chi, plus the Resolution of our Party on the Negro Question, must serve as guiding lights in approaching the Negro Question in the U. S."

(2) In another article in the same publication, he went on to state (Tr. 819–821):

"Perhaps one of the major reasons why we have not helped generate expanded mass activities in this period is the erroneous belief that the Party cannot make, relatively speaking, much progress until the storms surrounding us have subsided. * * *

* * * * *

"Let us remember that the Bolshevik Party (CPSU) in 1917 emerged from the underground in February and took power in the short space of eight months. Most of the preparatory work for the seizure of power was done in the

ARGUMENT

1. Petitioner first argues (Pet. 13–16) that the evidence adduced at the trial was insufficient as a matter of law to sustain the verdict. He asserts that there was produced "no evidence that petitioner had ever said or written a word in which he advocated the violent overthrow of the government" (Pet. 14), and he relies heavily on this Court's decision in *Schneiderman* v. *United States,* 320 U. S. 118.

But in the *Schneiderman* case the Court considered only the teaching and advocacy of the Communist Party up to and including 1927, and the Court expressly did not rule on the question of whether the Communist Party as of that time taught and advocated the violent overthrow.[13] Since then a great deal has transpired, as the evidence in this case clearly reflects, which renders conclusive the fact that the Communist Party teaches and advocates the overthrow of the Government of the United States by force and violence.

---

conditions of the underground. Let us not forget that the Communist Parties of Europe, especially in France and Italy, won the leadership of the working class in the underground partisan movements—a task they had not been able to accomplish prior to the Nazi occupation of their countries. * * *"

[13] The Court in *Schneiderman* observed at page 153: "We do not say that a reasonable man could not possibly have found, as the district court did, that the Communist Party in 1927 actively urged the overthrow of the Government by force and violence. But that is not the issue here. * * *"

In the instant case the jury had before it numerous exhibits not considered in the *Schneiderman* case, as well as direct testimony of several witnesses as to the revolutionary aims and purposes of the Party prior to and during the statutory period. As pointed out in the Statement, *supra,* the Party openly proclaims its adherence to the basic principles of Marxism-Leninism. Lautner testified that the principles of Marxism-Leninism are applicable to the present period which is called the period of "imperialism" by the Communists. Marxism-Leninism "is the theory and tactics of the proletarian revolution in general, and the theory and tactics of the dictatorship of the proletariat in particular" (Tr. 433). Lautner explained that since the United States is considered the leading imperialist country by the Communist Party, the final aim of the Party in the United States is the destruction of the existing social order and instituting in its stead "through the proletarian revolution and the dictatorship of the proletariat, socialism" (Tr. 444). As pointed out in the Statement, *supra,* and in the words of the court below, the "Party taught that to reach the goal of the 'Proletarian Revolution and the Dictatorship of the Proletariat', actual class revolt would be necessary, and violence and bloodshed inevitably would result" (Pet. App. 40).

Contrary to petitioner's bald assertion, the evidence to demonstrate petitioner's knowledge of

the Party's revolutionary program and his intent to bring about such overthrow was also abundant. He was an active member of the Party for over nineteen years, during which time a considerable amount of his effort in behalf of the Party was spent in teaching the doctrines of Marxism-Leninism in official Communist Party schools, including courses on "Strategy and Tactics" and "History and Role of the Party". See *supra*, pp. 8–9, 10–11. At one such school at Lake Ivanhoe, Wisconsin, in 1947, petitioner lectured on the failure of the first Russian revolution, when the strikers were driven back by the soldiers; he related that later a second revolution was begun by a series of strikes which spread all over (Tr. 995); the women joined the strikers and the soldiers came over to the side "of the people" and the revolution was successful (Tr. 996). Petitioner compared the discipline in the Communist Party with the staff system employed by the Army, where the generals are the highest authority. He referred to the students as the "privates" and likened himself to a "sergeant," because of his "advanced education in the Communist Party." Petitioner admonished the students that when the time came they would have to go where they were needed, leaving their wives and children. Wherever the strikes would occur, these Communist Party members would be needed to help the movement (Tr. 997–998). He warned that the Party would have a problem with the control of the Army and Navy,

but he "brushed by" that, stating that this was a problem for the top officials of the Communist Party (Tr. 997–998). He said that they would "approach this to avoid bloodshed, but those who had the control wouldn't want to give up." In capitalistic wars "it is not the capitalists" who spill their blood. "However, in this case it would be their blood" (Tr. 999). He said that the approach would be a more quiet method than by shooting firearms, but he added that the students may be at a place where they would be killed, but that those who survived would receive the benefits of the future generations (Tr. 999–1000). He once again remarked that "we will try to avoid bloodshed," but "we will not be pushed off. If we have to spill blood we will" (Tr. 1000).

Petitioner's familiarity with and his advocacy of the Marxist-Leninist revolutionary program are demonstrated not only by his organizational leadership and his teaching in Party schools, but also by his writings in official Party publications, in which he repeatedly urged Party members of the need to acquire greater knowledge of the Marxist-Leninist teachings (Gov. Exs. 59, 64, 66). All this evidence was fully sufficient, as was held in *Dennis* v. *United States*, 341 U. S. 494, to demonstrate that members of the Party who are so engaged "certainly * * * intend to bring about [the] overthrow [of the Government]" (page 499).

2. Petitioner next contends (Pet. 17–23) that his conviction cannot stand since the "membership" provision of the Smith Act is unconstitutional on its face and as applied in this case. Like the pending petition in *Scales* v. *United States*, No. 626, this Term, petitioner attacks the statute's constitutionality on three grounds: (1) that the "membership" clause fails to include intent as an element of the offense (Pet. 17–19), (2) that, even if intent is an element of the offense, the "membership" clause imputes guilt solely by reason of association (Pet. 19–20), and (3) that the application of the "membership" clause could not possibly satisfy the clear and present danger test as formulated in *Dennis* v. *United States*, 341 U. S. 494 (Pet. 21–23).

(a). Petitioner argues (Pet. 18) that the indictment seeks to remedy a fatal defect in the "membership" clause by charging that petitioner intended to bring about the overthrow of the Government. A like argument was advanced in *Dennis* and, while that case did not involve the "membership" clause of Section 2 (a) (3) of the Smith Act, it did involve the "organizing" clause of that subsection and also Section 2 (a) (1), relating to advocacy. In reviewing the trial judge's construction of the statute as requiring a specific intent, this Court said at page 499: "The structure and purpose of the statute demand the inclusion of intent as an element of the crime."

(b). Nevertheless, petitioner contends that the "membership" clause cannot be saved, even if proof of intent be required, because the statute imputes guilt solely by reason of association (Pet. 19). Petitioner refuses to acknowledge that "those who * * * combine for the purpose of advocating overthrow intend to bring about that overthrow." *Dennis* v. *United States*, *supra*, at 499. It is the *combining* with others in *active membership* in an organization advocating the Government's forcible destruction which constitutes the external manifestation of the illegal purpose. Petitioner's active membership and leadership in the Communist Party throughout the entire period alleged in the indictment is as much an overt act as the "advocacy" which the Court in *Dennis* found sufficient to justify the imposition of the statute's criminal penalties. In the face of the requirements that an accused charged with membership in a proscribed organization must be shown to have knowledge of the organization's illicit purposes and teachings and to have the specific intent to bring about the overthrow as speedily as circumstances would permit, the argument that the accused may be convicted for innocent association is completely untenable.

(c). The factors which led to the *Dennis* holdings on constitutionality impel the same result in this case. There the crucial elements were (i) the defendants' knowledge of the unlawful objectives of the Communist Party, (ii) their

active participation in support and furtherance of those proscribed objectives and (iii) the role of the Communist Party in the World. Manifestly, each of those elements is present here. The jury has found that petitioner was well aware of the Party's aim to overthrow the Government by force and violence; he furthered and supported that end by his continued active membership and leadership; and the place of the Communist Party in American and world affairs during the statutory period (May 14, 1951–May 14, 1954) was surely no less significant and no less dangerous than in *Dennis* or in *Frankfeld* v. *United States*, 198 F. 2d 679 (C. A. 4), certiorari denied, 344 U. S. 922, or in *United States* v. *Flynn*, 216 F. 2d 354 (C. A. 2), certiorari denied, 348 U. S. 909.

At least where, as in petitioner's case, the membership is active and not merely passive or nominal, (cf. *Galvan* v. *Press*, 347 U. S. 522, 526–527), it does not seem a tenable argument that, although Congress may punish one who *advocates* the violent overthrow of the Government or who *organizes* a group which so advocates, it is without constitutional power to prohibit *membership* in such an organization with knowledge on the part of the member of this unlawful purpose, as well as the intent that it be brought about. Those who retain such active membership in an organization of this type "render [it] aid and encouragement" (*Frankfeld* v. *United States*, *supra*, at

684), contribute to its success, and thereby help it in the achievement of its evil purpose. This is certainly "a sufficient evil for Congress to prevent." *Dennis* v. *United States, supra,* at 509.

3. Petitioner complains (Pet. 24–25) that it was reversible error for the trial court to deny his motion to require the Government to produce for the court's inspection a contemporaneous report made to the Federal Bureau of Investigation by the prosecution witness Brzek concerning the subject matter of his testimony. As was pointed out by the court below (Pet. App. 46–48), not only was the denial of the motion a proper exercise of the court's discretion within the rule of law laid down by this Court in *Gordon* v. *United States,* 344 U. S. 414, 418–419, and in *Goldman* v. *United States,* 316 U. S. 129, 132, but the record also shows that the motion was untimely.[14]

Petitioner's counsel, during the course of cross-examination of Brzek, brought out only that the report in question was in existence and was in possession of the Federal Bureau of Investigation in Milwaukee, Wisconsin. The "report thus

[14] Earlier in the case, the trial court had inspected reports made to the Federal Bureau of Investigation by another prosecution witness, Czarnowski. During cross-examination of Czarnowski, petitioner moved that the trial judge inspect three written reports of the witness (Tr. 922–927), which reports were submitted to the court pursuant to its order (Tr. 989). After inspection of the reports, the court found there was no contradiction between the testimony of the witness and the reports, and the reports were excluded (Tr. 1014–1015).

made was not in the courtroom, nor did the witness use a copy thereof to refresh his memory" (Pet. App. 47). No foundation whatever was laid by petitioner tending to show that the report would in any way impeach or contradict the witness or exculpate the petitioner, or would otherwise be materially relevant. Petitioner's counsel announced he had concluded his cross-examination, the Government had no redirect examination, *and the witness was excused* (Tr. 1011). Government counsel advised the court that, except for "loose ends" resulting from miscellaneous trial motions on which the court had reserved decision, the Government rested its case (Tr. 1012). It was not until this point in the proceedings that petitioner's counsel asked leave to approach the bench and during the ensuing conference at side bar moved for production of Brzek's report (Tr. 1013). Good cause not having been shown, the motion was properly denied (Tr. 1021). *Goldman* v. *U. S., supra; Gordon* v. *United States, supra.*

4. As his fourth point, petitioner declares that the Court of Appeals' decision sustaining the evidentiary rulings of the trial court conflicts with decisions in other circuits and is a departure from accepted principles applicable to criminal trials (Pet. 26–29).

(a). Petitioner complains because Lautner was permitted to give opinion testimony as to the meaning of Marxism-Leninism and as to the aims

of the Communist Party, and he urges that such testimony should have been excluded as inadmissible hearsay (Pet. 26). The witness was a high level functionary in the Communist Party over a period of approximately twenty years ending in 1950. During his Party membership he was a teacher in official Communist Party schools and held various organizational positions in the Party. Clearly the witness' activities as a leader in the Communist Party qualified him as an expert on the subject matter of his testimony, which related to matters involving specialized knowledge "as to which the opinion of experts is unquestionably admissible." *Frankfeld* v. *United States, supra,* at 689.

Contrary to petitioner's assertion that similar testimony was admitted in Smith Act conspiracy cases on the basis of conspiracy law (Pet. 26), its admissibility in such cases was predicated (1) on the fact that the subject matter under inquiry was relevant to the charge and (2) on the ground that it was a proper subject for expert testimony. *E. g., Frankfeld* v. *United States, supra,* at 689; see also, Brief for the United States in *Scales* v. *United States,* No. 626, this Term, at pp. 22–23.

(b). Petitioner contends that the testimony of Meyer, even if relevant to petitioner's knowledge or intent, was inadmissible as being too remote. The argument is that Meyer's testimony relative to conversations had with petitioner prior to

June 28, 1940, cannot be used to show intent, since it cannot be presumed that a state of mind, innocent at the time it was shown to exist, would continue unchanged after an enactment of a law making it an element of an offense (Pet. 27). Petitioner ignores the fact that the evidence offered at the trial overcame any such presumption and established that he possessed the requisite knowledge and intent throughout the entire period alleged in the indictment. "How far back of the commission of a crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence." *United States* v. *Dennis,* 183 F. 2d at 231 (C. A. 2).

(c). Petitioner also urges that, if the Lautner and Meyer testimony was inadmissible, it follows that the Marxist-Leninist classics which they identified likewise should have been excluded, and that such texts should have been excluded for the additional reason that there was no evidence that the petitioner understood or taught that this literature advocated the violent overthrow of the Government (Pet. 28–29).

This classical literature is identical to some of that which was received in all prior Smith Act prosecutions involving Communist Party leaders, *e. g., United States* v. *Dennis, supra; Frankfeld* v. *United States, supra; United States* v. *Flynn,* 216 F. 2d 354 (C. A. 2) certiorari denied, 348 U. S. 909. As pointed out in the Statement,

supra, the evidence demonstrated that the Communist Party bases itself on Marxism-Leninism as contained in the classical writings of Marx, Engels, Lenin and Stalin. Petitioner's familiarity with and use of the Marxist classics, in his capacity as a teacher at official Communist Party schools, was brought out through the testimony of several witnesses.

5. Petitioner's next point is that the Court of Appeals erred in affirming the trial court's instruction to the jury that the teaching and advocacy alleged in the indictment have reference to the teaching and advocacy of the Communist Party as an entity and not to that of the members individually (Pet. 29–31). The very language of the Smith Act negatives the contention that Congress intended the test of guilt to be knowledge that a majority or a substantial portion of the organization's membership advocated the proscribed doctrine. If the statute be construed so as to require proof that the individual members, as distinguished from the group, advocated the proscribed doctrine, there would be no basis for contending, as does petitioner, that the advocacy of a *majority* or a *substantial portion* of those members would be sufficient. Rather, under petitioner's theory, it should be more logically assumed that Congress intended that *all* of the members must be proved to advocate the proscribed teaching in order to bring any individual within the purview of the statute. The

absurd consequences which would flow from petitioner's theory are obvious.

6. As his sixth point, petitioner argues that Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)) bars prosecution of the offense charged in the indictment (Pet. 31–34). We submit, however, that the Court of Appeals was correct in holding that Section 4 (f) has no such effect.

First, the words of the pertinent provisions of the Smith Act itself show that mere membership in the Communist Party alone does not constitute the offense. As petitioner concedes in his discussion of the sufficiency of the evidence (Pet. 18–20), the statute expressly sets forth, as an additional element, knowledge on the part of the defendant of the purposes of the society, group or assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence. Furthermore, the prosecution must allege and prove that the defendant intended to bring about the Government's violent overthrow as speedily as circumstances would permit. See *Dennis* v. *United States*, *supra*, at 499. Thus, petitioner has not been convicted on mere proof of Party membership *per se*. The conviction rests on much more—knowing, active, and purposive membership.

Secondly, it is clear, as the court below pointed out that the "purpose of [Section 4 (f)] * * *

was to insure the enforceability of the registration provisions of the act [Internal Security Act of 1950] by making the privilege against self-incrimination unavailable as a defense to failure to register" (Pet. App. 52).[15] That the Congress intended to do not more than this is borne out by the legislative history[16] and by Section 17 of the Internal Security Act of 1950 (50 U. S. C. 796) which limits the application of Section 4 (f) to the provisions of that Act. It provides that—

> The foregoing provisions of this title shall be construed as being in addition to and *not in modification of existing criminal statutes.* [Emphasis added.]

Petitioner also urges that the Communist Control Act of 1954 must be construed to amend or repeal the "membership" clause of the Smith Act, thus barring his conviction. The 1954 Act contains no reference to the Smith Act, nor does its history indicate any purpose on the part of Congress that the later statute repeal, amend, or supplement the Smith Act.[17]

---

[15] The court below, in reaching its conclusion on this point, adopted the language of the Court of Appeals for the Fourth Circuit in disposing of an identical argument made in *Scales* v. *United States*, 227 F. 2d 581, pending on petition for a writ of certiorari, No. 626, this Term.

[16] See 96 Cong. Rec. 14175, 15198.

[17] The legislative history reflects the opposite. See 100 Cong. Rec. 15102–15110, and particularly the remarks of Senators Humphrey and Kefauver at pages 15105 and 15106, respectively. It is significant in this regard, also, that the

7. As his seventh and final point, petitioner argues that he was deprived of his right to a fair and impartial trial by virtue of the legislative findings in Sections 2, 3, and 4 of the Communist Control Act of 1954, in which Congress declared that the Communist Party advocates the overthrow of the United States Government by force and violence. Petitioner contends that in the face of this legislation it would be naive to suppose that a jury would even consider the question *de novo,* much less render a contrary verdict. (Pet. 34–35.)

Petitioner does not argue that prejudice on the part of any juror appears from the record, but he urges that prejudice on the part of every prospective juror must be implied. As the court below held (Pet. App. 52), the effect of petitioner's argument would be to immunize from prosecution all Communists charged with violating the Smith Act. Also, as the court stated (Pet. App. 52):

---

petition (p. 33) distorts the meaning of the Humphrey Amendment by urging that it provided that membership in the Communist Party would be illegal only when accompanied by "knowledge of its purpose." The plain meaning of the Amendment was, however, that membership *per se* in the Communist Party would be outlawed, that knowledge of alleged illicit purposes was only required in connection with membership in "any other organization having for one of its purposes or objectives * * * overthrow of the Government of the United States * * * by the use of force or violence."

If any jury had any such prejudgment, the instructions of the Court cured their error.[18] Furthermore, whether any such belief existed in the mind of any juror, might have been discovered on the *voir dire* examination.

CONCLUSION

For the reasons set forth herein, we submit that the decision below, like that in *Scales* v. *United States*, No. 626, is correct and need not be reviewed. We recognize, however, that, should the Court grant the writ in *Scales* it may desire to review this case as well, or to hold the petition in abeyance pending the disposition of that case. If certiorari is granted here, we urge that review be limited to the issues embraced in the First,

[18] For example, the trial judge instructed the jury that before the defendant could be found guilty of the charge in the indictment the jury "must believe *from all the evidence* and beyond a reasonable doubt that the Communist Party of the United States * * * was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit" (Tr. 1504, emphasis added).

Second, and Sixth questions which petitioner seeks to bring to this Court.

Respectfully submitted.

SIMON E. SOBELOFF,
Solicitor General.
WILLIAM F. TOMPKINS,
Assistant Attorney General.
HAROLD D. KOFFSKY,
KEVIN T. MARONEY,
PHILIP T. WHITE,
Attorneys.

MARCH 1956

LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
SEP 24 1956
JOHN T. FEY, Clerk

No. [illegible] 4

In the Supreme Court of the United States

OCTOBER TERM, 19[illegible]

CLAUDE MACK LIGHTFOOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General,
[illegible],
Assistant Attorney General,
[illegible],
[illegible],
[illegible],
Attorneys,
Department of Justice, Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	1
Questions presented	1
Statutes involved	2
Statement	3
1. Evidence of the Communist Party's unlawful purposes	4
2. Evidence of petitioner's knowledge and intent	4
Summary of Argument	21
Argument	28
I. The evidence fully sustains the verdict	28
A. The proof of petitioner's knowledge	29
B. The proof of petitioner's intent	33
II. The membership provision of the Smith Act is constitutional on its face and as applied in this case	35
III. The trial court did not abuse its discretion in denying petitioner's motion that the court inspect the report of the witness Brzek	38
IV. The court below properly upheld the trial court's admission of testimony showing the doctrines and objectives of the Communist Party and petitioner's long connection with them	40
A. Testimony of John Lautner	40
B. Testimony of Frank S. Meyer	43
C. The Marxist-Leninist "Classics"	45
V. The trial court correctly instructed that the teaching and advocacy charged in the indictment refers to the teaching and advocacy of the Communist Party	46
VI. Section 4 (f) of the Internal Security Act of 1950 does not amend the "membership clause" of the Smith Act so as to exempt membership with knowledge and intent in the Communist Party	
VII. The Congressional findings in the Internal Security Act of 1950 and the Communist Control Act of 1954 did not preclude a fair trial	49

Page
Conclusion 49
Appendix 50

CITATIONS

Cases:
American Communications Ass'n. v. *Douds*, 339 U. S. 382 34
Dennis v. *United States*, 341 U. S. 494 ..... 22, 23, 34, 35, 36, 37, 57
Frankfeld v. *United States*, 198 F. 2d 679, certiorari denied, 344 U. S. 922 ..... 41, 42 45
Goldman v. *United States*, 316 U. S. 129 39
Gordon v. *United States*, 344 U. S. 414 ..... 24, 39
Jencks v. *United States*, No. 23, this Term 24, 39
Scales v. *United States*, No. 29, this Term 22, 27, 28, 29, 35, 38, 39, 49
Schneiderman v. *United States*, 320 U. S. 118 45
United States v. *Dennis*, 183 F. 2d 201, affirmed, 341 U. S. 494 ..... 19, 25, 26, 41, 42, 44, 45
United States v. *Flynn*, 216 F. 2d 354, certiorari denied, 348 U. S. 909 ..... 23, 37, 45
United States v. *Mesarosh*, 223 F. 2d 449, pending on certiorari, No. 20, this Term 25, 26, 42, 44

Statutes:
Communist Control Act of 1954 (50 U. S. C. 841–843):
Sections 2, 3 and 4 ..... 2, 49
The Internal Security Act of 1950 (50 U. S. C. 783 (f), 796):
Section 4 (f) 2, 27, 49
Section 17 3
The Smith Act (18 U. S. C. 2385) 2

Miscellaneous:
H. Rep. No. 2683, 75th Cong., 3d Sess. 27, 48
New York Times, February 15, 1956, p. 10, Speech of Soviet Communist Party Secretary Khrushchev before the 20th Congress of the Soviet Party 33
S. Rep. No. 1796, 76th Cong., 3d Sess. 27, 47
World Almanac, The, 1956, p. 741 37

In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 32

CLAUDE MACK LIGHTFOOT, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the Court of Appeals (R. 619–634) is reported at 228 F. 2d 861.

JURISDICTION

The judgment of the Court of Appeals (R. 635) was entered on January 12, 1956. The petition for a writ of certiorari was filed on February 3, 1956, and was granted on March 26, 1956 (R. 635). 350 U. S. 992. The jurisdiction of this Court rests upon 28 U. S. C. 1254 (1).

QUESTIONS PRESENTED

1. Whether the evidence sustains the verdict.

2. Whether the "membership" clause of the Smith Act (18 U. S. C. 2385) is unconstitutional on its face or as applied to the facts of this case.

3. Whether the trial court erred in denying petitioner's motion that the court inspect the written report made to the F. B. I. by a prosecution witness concerning the subject matter of his testimony so that it could determine whether the report contradicted the testimony and was therefore material to the defense.

4. Whether the conviction and the affirmance below were based on evidence which should have been excluded as incompetent, irrelevant and remote.

5. Whether the trial court erroneously construed and applied the membership clause of the Smith Act in instructing the jury that the teaching and advocacy to which the indictment refers is the teaching and advocacy of the Communist Party as an entity and not that of the members individually.

6. Whether the immunity conferred by Section 4 (f) of the Internal Security Act (50 U. S. C. 783 (f)) bars prosecution of the offense charged in the indictment.

7. Whether the findings made by Congress in the Communist Control Act with reference to the Communist Party deprived the petitioner of the right to a fair and impartial trial.

STATUTES INVOLVED

The Smith Act (18 U. S. C. 2385), Section 4 (f) of the Internal Security Act of 1950 (50 U. S. C. 783 (f)), and Sections 2, 3, and 4 of the Communist

Control Act of 1954 (50 U. S. C. 841–843) are set forth in the brief for petitioner (pp. 89–92).

STATEMENT

The indictment upon which the petitioner was convicted was returned by a grand jury in the Northern District of Illinois, on May 14, 1954. The indictment contained one count and charged that from on or about July 26, 1945, up to and including the date of its filing, the Communist Party of the United States was a society, group and assembly of persons who taught and advocated the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; that the petitioner was a member of the Communist Party throughout the indictment period with knowledge of its aims and objectives; and that he intended to bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

After the disposition of lengthy pre-trial motions, the case was set for trial on January 11, 1955. On January 12, 1955, and before the taking of testimony, petitioner and his counsel conceded that he was a member and officer of the Communist Party during the indictment period (R. 10, 11, 12). On January 26, 1955, the jury returned a verdict of guilty (R. 591). On February 15, 1955, the trial judge, Judge Sullivan, denied petitioner's various motions for acquittal, for a new trial, and for arrest of judgment (R. 602–611), and imposed sentence of five years' im-

prisonment and a $5,000 fine (R. 611). The Court of Appeals unanimously affirmed (R. 619–634).

The evidence sustaining the verdict may be summarized as follows:

1. EVIDENCE OF THE COMMUNIST PARTY'S UNLAWFUL PURPOSES

In this, as in other prosecutions under the Smith Act, including the other cases now before this Court, there was extensive evidence demonstrating the aim and purpose of the Communist Party to bring about the forceful overthrow of the Government as speedily as circumstances would permit. We set forth this evidence in an Appendix (*infra*, pp. 50–61), and turn immediately here to the evidence showing petitioner's role as a leading member of the Party, fully familiar with its purposes and intending their achievement through his efforts in their support.

2. EVIDENCE OF PETITIONER'S KNOWLEDGE AND INTENT

As already noted, petitioner conceded at the outset of the trial his membership and officership in the Communist Party (R. 10, 11, 12). The evidence established, in addition, that his position was one of active, informed leadership at the highest levels. We summarize the evidence of his Party career and activities substantially chronologically.

The petitioner was a member of the Communist Party as early as 1930 (Gov't. Ex. 57). In 1934 he was the South Side organizer, and a member of the District Bureau of the Young Communist League (R. 62). The Young Communist League was the

Youth Section of the Communist Party and affiliated with the Young Communist International. As early as September 1934, the petitioner was a full-time Communist Party functionary (R. 60–62). A Party functionary is a Party member who is a paid officer of the Party (R. 91). During this period petitioner was also a member and later organizer of the South Side Section of the Illinois-Indiana District of the Party (R. 62).

In 1936, the petitioner went to Moscow, USSR, as a delegate to the Sixth World Congress of the Communist International (R. 64). The Young Communist International at that time was an international organization with headquarters in Moscow. It was affiliated with the Communist International, which was the World Communist Party. The Communist Parties of the various countries, including the United States, were sections of the Communist International (R. 64).

From 1936 to 1940, petitioner was the Section Organizer of the Southside Section, and also a member of the District Committee of the Communist Party of Illinois and Indiana. As a member of the District Committee or Bureau, petitioner was not only responsible for Communist Party activities in his own section, but also shared responsibility for all Party work, including the educational activities, that was carried out in the Illinois-Indiana District of the Party (R. 84).[1]

[1] In the Communist Party, the club is the basic unit on the lowest level. There are two types of clubs, the Industrial Club and

In addition to his numerous duties and activities in connection with the general affairs of the Party, the petitioner attended a series of meetings with one Harry Hayward, a member of the Political Bureau of the National Leadership Department of the Party during 1936. These meetings, which took place over a period of six or seven months, were held for the purpose of collaborating with Hayward, who was writing a pamphlet concerning the problems of the Party's attitude, policy, and theory on the so-called Negro question in the United States. They discussed such subjects as the Party's policy with regard to self-determination in the so-called Black Belt of the South and the means to be used in making this program palatable to Negroes. They also discussed the relationship of Communist Party policy to the struggles of the Negro people and Negro nationalism. These discussions were held from the Marxist-Leninist viewpoint (R. 111, 114–115).

Negro nationalism, as discussed at these meetings, referred to a program for the benefit of the Negro people which was not subordinated completely to the needs and interests of the Communist Party and the proletarian revolution (R. 113). A Negro nationalist, from the Communist point of view, was a person who

---

the Community Club. The next higher level is the Section. In a section there may be five or more clubs. The next higher level is the State Board or State Committee which is the highest executive branch for the Party organization within a State. On the highest level within the Party is the National Committee (R. 331–333).

put the interests of the Negro people ahead of the interests of the Communist Party, while the Party's prime interest was in utilizing the Negro people as a force for the overthrow of capitalism. It was the position of the Communist Party that the anti-imperialist struggles of the peoples of Asia, Africa, and South America are auxiliary and secondary to the proletarian revolution, and all aggressions on the part of these people who have been oppressed by more advanced peoples (imperialists) are simply forces to be used by the Communist Party as a support for the victory of the proletarian revolution. Since the Communist International had decided that the Negroes in the United States were on the same footing as the repressed colonial peoples, the Party took the position that the Socialist Revolution in the United States could be best served if the Negro people were used in its cause. This they felt could be done if the Party advocated a program of national liberation and called for the separation of a so-called Black Belt in the South from the United States (R. 111–114).

The petitioner, in accord with Communist Party policy, opposed the concept of Negro nationalism. It was his position that such a policy weakened the Party's opportunity of carrying out its program among the Negro people and made it more difficult for the Party to utilize the nationalist feeling among the Negro people for strengthening not primarily the Negro struggle, but the general over-all policy of the

309827—56

Party, the leadership of the working class in the establishment of socialism and the dictatorship of the proletariat (R. 113–116).[2]

During the late 1930's and early 1940's, the petitioner, as evidenced by the testimony of the witness Meyer[3] as well as by numerous Government exhibits

---

[2] In a speech given on November 10, 1950 (R. 362; Gov't. Ex. 63), the petitioner was still taking the position that the so-called "Negro question" in the United States is analogous to the situation of the so-called colonial peoples. And again in an article he published in the "Party Forum" of December 1951 (Gov't. Ex. 64), he emphasized that this question cannot be properly resolved without the guiding light of Marxism-Leninism.

[3] Witness Frank Meyer was closely associated with the petitioner from late 1934 until 1942. He attended Princeton University for two years; received a Bachelor's and later a Master's Degree at Oxford University, England; and thereafter did graduate work at the London School of Economics and the University of Chicago. He joined the Communist movement in 1931; became President of the October Club at Oxford University which was formed ostensibly for the study of Communism, but was actually a propaganda outlet for the Communists. Thereafter, he was in a Communist Party group in London, and Secretary of the National Study Bureau of the Communist Party of Great Britain. He rose swiftly in the Communist Party hierarchy in England, becoming a member of London District Committee, the Central Committee, and one summer worked with the Secretariat of the Communist Party of Great Britain. After his transfer to the Communist Party of the United States in 1934, Meyer was assigned to Chicago, Illinois, where he became a member of the District Bureau of the Young Communist League, member of the South Side Section of the Communist Party of Illinois-Indiana, and Educational Director of the same section. Thereafter, he became Membership Director, Educational Director and later Assistant Organizational Secretary of the Communist Party of Illinois-Indiana. In addition to these organizational duties, he became Director of the Chicago Workers School and other inter-Party schools and classes conducted by the Communist Party in Illinois and Indiana (R. 57–63).

(Gov't. Exs. 33, 34, 35, 36, 37), was a Communist Party instructor in inner-Party schools and classes, and a member of the faculty and instructor at the Chicago Workers School (R. 63). The Chicago Workers School, though ostensibly open to Communists and non-Communists alike, was operated by the Communist Party, and 95 percent of the instructors were Communist Party members. Its curriculum was based on Marxist-Leninist doctrine and all of the courses were based on a Marxist-Leninist interpretation (R. 65–66). The program of the school, including the class outlines, was prepared by Meyer in consultation with the District Bureau of the Party and the National Education Commission of the Party (R. 63–66). There was a general conformity in the Party throughout the country with regard to the major Marxist-Leninist courses, with minor variations to suit local requirements (R. 67).

Witness Meyer, Director of the School, had a number of discussions with the petitioner relative to the content of the courses during which the petitioner's educational background in the Party was discussed. They also had a number of conferences relative to the theoretical content of the courses on "Marxism-Leninism" and "History of the C. P. S. U." which the petitioner taught at the school (R. 71–73). Meyer found the petitioner fully qualified to meet the standards required for Party members who were charged with the responsibility of teaching its most important theoretical courses (R. 77). In fact, he found the petitioner to be an excellent instructor and one whose work required little or no supervision (R. 68). Meyer

discussed with the petitioner, in great detail, the material that was used in the classes (R. 79, 80). In order to prepare to teach the courses, it was necessary for the petitioner to use the so-called "Marxist-Leninist classics." Not only did the petitioner use these texts in connection with his instruction, but on numerous occasions during the course of discussions with Meyer relative to Marxist-Leninist theory and the proper method of teaching theory discussed the content of the "classics" in great detail (R. 78–81). These discussions, according to Meyer, were held to insure that the courses would be taught in a uniform manner; and the petitioner and Meyer were in complete agreement as to what was to be taught and how it was to be taught (R. 97). At these conferences such works as *The Communist Manifesto* (Gov't Ex. 18), *Foundations of Leninism* (Gov't. Ex. 19), *Problems of Leninism* (Gov't. Ex. 21), *History of the Communist Party of the Soviet Union (Bolsheviks)* (Gov't. Ex. 22), *State and Revolution* (Gov't. Ex. 23), and *Left Wing Communism—An Infantile Disorder* (Gov't. Ex. 25) were discussed generally, and certain specific parts in great detail.[4]

---

[4] During their discussions relative to the material to be covered in the classes, Meyer recalled that he and the petitioner specifically discussed the *Communist Manifesto* (Gov't. Ex. 18) and *Foundations of Leninism* (Gov't. Ex. 19) in their entirety. They also discussed *Problems of Leninism* (Gov't. Ex. 21), pp. 7–9, 10–12, 16–28, 44–45, 66; *History of Communist Party of the Soviet Union (Bolshevik)*, pp. 2, 32–34, 70–72, 81, 133, 134, 149, 150, 151, 159, 167–168, 170, 171, 180, 183, 188, 192, 195, 198, 204, 205, 208, 223, 224, 231, 267, 274, 353–363; *State and Revolution* (Gov't. Ex. 23), pp. 9–10, 19–20, 23, 33–34, 52–53; *Left Wing Commu-*

The petitioner also taught at District Training schools of the Party which were conducted by full-time functionaries for the purpose of obtaining new blood in the Party leadership. These schools were of four, five and six weeks' duration, operated on a full-time basis, and the students were secluded. At these schools the students were kept under constant training pressure, not only during their formal classes, but in their spare time as well. The school program included discussions with the students, directed toward adjusting their personalities to meet the standards expected of trained Party leaders. Qualifications for instructors at the District Training Schools required that they either be leading Party functionaries or top-level Communist leaders in the educational fields. In this category were members of the National School Commission of the Communist Party or responsible Party leaders specializing in teaching Marxism-Leninism within the District. Meyer testified that the petitioner was fully qualified to be an instructor inasmuch as he was a top Party functionary and one of the most capable members in the Illinois-Indiana District of the Communist Party in the field of Marxist-Leninist theory (R. 82–84).

After a period of military service during World War II, the petitioner returned to Chicago and resumed his activities in the Communist Party. By the time he returned to Chicago, the Party had been re-

---

nism—An Infantile Disorder (Gov't. Ex. 25), pp. 7, 12, 16, 29, 38, 59, 66–67, 70, 74–75, 80; *What Is To Be Done* (Gov't. Ex. 41), pp. 8, 105–106, 157, 158, 163, as well as numerous others (R. 97–108).

constituted nationally as well as in the Illinois-Indiana district (R. 41–43, 162, 435, 436, 450).[5] In fact, petitioner was elected to the District Committee of the reconstituted Communist Party of Illinois in August 1945 while still in the Army and ostensibly not a member of the Party (R. 37).

In November 1945, the petitioner, while still in the Army, attended a meeting of the District Committee of the Communist Party which was called for the purpose of discussing the role to be played by the Party in veterans' organizations. Gil Green, Chairman of the Communist Party of Illinois at the time, informed those present that the National Committee of the Communist Party had decided that the Communist veterans who had left the service should infiltrate the American Legion and the Veterans of Foreign Wars and try to take over the leadership of these organizations. Green pointed out that Hitler had taken over Germany with the aid of the veterans (R. 346–347).

Beginning in early 1946, the petitioner's rise to high leadership positions in the Party became quite swift. Between 1946 and 1954, he was Executive Sec-

---

[5] In 1944, the Communist Party under its then general secretary, Earl Browder, became known as the Communist Political Association. For a period of a little more than a year, the Political Association, ostensibly at least, abandoned its program of the "class struggle" and professed to believe that peaceful collaboration between Communism and Capitalism was a possibility. At a Special Convention held in July 1945, however, Browder and his policy were repudiated and the Party, under the leadership of William Z. Foster, resumed its former identity as the Communist Party, was reconstituted and returned to the revolutionary tenets of Marxism-Leninism (R. 36, 342–343; Gov't Exs. 48, 55).

retary of the Illinois State Committee (R. 25–26; Gov't. Exs. 2, 5); Acting State Chairman (Gov't. Ex. 57) and State Secretary, the top official in the Communist Party of Illinois in 1950 (R. 344–345). During this same period, he was one of the officers of the Party entrusted with its financial affairs (Gov't Exs. 1, 2, 5, 6, 7, 8).

In addition to performing his organizational duties as a top leader of the Party, petitioner attended many meetings and was an instructor in Party schools. In 1946 at a convention of the South Side Section of the Communist Party of Illinois, he was among those who gave reports. He stated, among other things that the labor movement was more militant from 1917 to 1921, but here in this country the revolutionary movement had not succeeded. He pointed out, however, that in Russia the revolution under the wise leadership of Lenin and Stalin was successful (R. 347–348).

The witness Skinner* testified that in 1946 she attended the Abraham Lincoln School in Chicago, and received a course in the "Fundamentals of Marxism" from the petitioner.

During the year 1947, the petitioner also participated in a number of closed Communist Party meetings and was an instructor in at least one additional Communist Party school. In early 1947, he attended a meeting of Communist veterans in which the importance of having Communist Party members infil-

---

*Skinner was a member of the Party from 1946 to January 1948, and during part of that period worked in the District Office of the Communist Party of Chicago (R. 448).

trate into veterans' organizations was again emphasized. The Party members were reminded once again of the important part played by the German and Italian veterans when Hitler and Mussolini came to power. Later in 1947, the petitioner himself spoke at a meeting in Chicago and told the Party members that an Investigating Committee which had requested his appearance, with certain files of the Party "would play hell" before they would get them. He also pointed out that under certain circumstances it was necessary for Party functionaries to remain under cover (R. 349–351).

In July 1947, the petitioner was an instructor at a full-time Party School at Lake Ivanhoe, Wisconsin. The witness Brzek,[7] who was a member of the Communist Party of Wisconsin, attended the school and testified that the petitioner taught courses on "Strategy and Tactics" and "History and Role of the Party" (R. 457–458; Gov't. Ex. 54). In connection with his instruction in these courses the petitioner used a pamphlet entitled "Democratic Centralism" (R. 457–458; Gov't Ex. 55), "The History of the Communist Party" (Gov't. Ex. 22),[8] and other books and pamphlets. During his instruction the petitioner pointed out that, because of lack of proper self-criticism in

---

[7] Brzek was a member of the Communist Party in Milwaukee, Wisconsin, from 1943 to 1947, and joined at the request of the Federal Bureau of Investigation (R. 452).

[8] Gov't. Ex. 56. *History of the Communist Party of the Soviet Union*, was the book actually used by witness Brzek in connection with the petitioner's classes at the school. It was stipulated by defense counsel that Gov't. Ex. 56 was in evidence as Gov't. Ex. 22 (R. 458–459).

the Party, Earl Browder was able to lead the Party off the path of socialism (R. 460). He went on to discuss the failure of the early Russian revolution and point out that the second and successful Russian revolution began with a series of strikes and then spread, and that even the women participated in that revolution. He also pointed out that the American revolution was a landowner's revolution and not a proletarian revolution as was the second revolution in Russia (R. 460–461).

In discussing Party discipline, he compared it to the discipline in the Army with its staff system, observing that the highest authority were the colonels, lieutenants and sergeants. He compared himself to a sergeant because of his "advanced education" in the Party* (R. 460–461). He then emphasized that "when the time came" the Party members would have to leave their homes and their families and go to their appointed posts. They were the same as soldiers and must make the necessary personal sacrifices to man

---

* In Gov't. Ex. 54 under the subject "The History and Role of the Party," reading assigned from *Foundations of Leninism* (Gov't. Ex. 19), at page 109, we find the following statement:

"I. The Party as the Vanguard of the Working Class

"The Party must be, first of all, the vanguard of the working class. The Party must absorb all the best elements of the working class, their experience, their revolutionary spirit, their selfless devotion to the cause of the proletariat. But in order that it may really be the vanguard, the Party must be armed with a revolutionary theory, with a knowledge of the laws of revolution. Without this, it will be incapable of directing the struggle of the proletariat, of leading the proletariat."

their posts; otherwise, their posts would be open with no one there to aid the movement. He also remarked that the control of the Army and Navy would be a problem, but brushed it aside by saying it was not a problem for the rank-and-file members but rather one to be handled by the top officials of the Party (R. 461).

The petitioner then discussed the necessity of using bloodshed to obtain the objectives of the Party. He said "that we will approach this to avoid bloodshed, but those who had control, wouldn't want to give up" (R. 461–462). It was his position that in capitalistic wars the capitalists themselves don't have their blood spilled; "however, in this case it would be their blood." He went on to explain that the bloodshed would not involve shooting firearms, but a more quiet method (R. 461). He again compared the Party with the Army, stating that in time of war soldiers take orders from their superiors without question, even though they are going to face death. He told his students to be ready to die because they may be killed. However, those who survived would receive the benefits of the future generations (R. 461–462). He then reiterated his earlier statement that the Party would "approach it to avoid bloodshed" but, because bloodshed is a pre-condition of the successful revolution, he emphasized that bloodshed was on the agenda when he stated "we will not be pushed off. If we have to spill blood, we will" (R. 462).

In September 1947, the petitioner was present at a Communist Party meeting held in Chicago to cele-

brate the 100th anniversary of Marxism. John Gates, a member of the National Committee and editor of the "Daily Worker" was the principal speaker. He reviewed the history of the Communist parties from the time of Marx and Engels to the present. He quoted Lenin as saying that it would take many years of hard work to establish proletarian governments in the world and then quoted a statement by the petitioner with regard to establishing a proletarian government in the United States. Gil Green also spoke, stating that he hoped to celebrate the next anniversary of Marxism in the Soviet Republic of the United States (R. 351–352).

At the 1947 State Convention of the Communist Party of Illinois, the petitioner was present and was elected a member of the State Board of the Party. Gil Green was among those who spoke, and emphasized the importance of Marxist-Leninist education for Party members. He also instructed the Party members to take a more active part in the unions, and concluded his remarks by referring to the Americans as imperialists (R. 353–355).

The petitioner attended the National Convention of the Party held in New York City during August 1948. He occupied the speakers platform throughout the proceeding, together with William Z. Foster, Eugene Dennis and Elizabeth G. Flynn, and was the chairman of one of the sessions. He gave the principal report for the session, after being introduced by Eugene Dennis, the National Secretary of the Party (R. 437–438).

At the State Convention of the Communist Party of Illinois in 1948, petitioner was one of three officers appointed to a regional board which was set up to accelerate Communist infiltration in key basic industries (R. 358). This was in accord with the program of the Party which was established after the 1945 National Convention. The industrial concentration policy called for the concentration of Party members in such key basic industries as steel, transportation and others (R. 358–360).

In 1950, the petitioner became an alternate member of the National Committee of the Communist Party, which was the top governing body of the Communist Party in the United States (R. 333, Gov't. Exs. 45, 93). In this position he shared the responsibility for carrying out the Party's program throughout the United States.

Thereafter, the petitioner continued to be active in the Communist Party in Illinois, and in August 1950 was chairman of a meeting which was held in Chicago for the purpose of honoring Elizabeth Gurley Flynn, a member of the National Committee of the Communist Party (R. 361). Again in November 1950, the petitioner was the principal speaker at a Party meeting held in honor of the 33rd anniversary of the Russian Revolution (R. 362–363; Gov't. Ex. 63). At that meeting, petitioner spoke in praise of the Russian Revolution and stated, among other things, that it was brought about "under the wise leadership of Lenin and Stalin."

During the period from 1949 through 1953, in addition to being a leading functionary of the Communist

Party of Illinois and having been elected as alternate member of the National Committee in December 1950 (R. 335; Gov't Exs. 61, 93), the petitioner, by his words and in his writings, reflected his continued adherence to the program of the Communist Party and to the principles of Marxism-Leninism upon which the Party based its activities (R. 308, 371; Gov't Exs. 1–6). In June 1951, he spoke at a Communist Party meeting in Chicago and assured those present that they would win against their enemies, reminding them that even though their weapons were not as large as their enemies', David had slain Goliath with a slingshot. At the conclusion of this meeting, he requested all present to rise and sing the "Internationale" (R. 371–372). In the same month, the petitioner spoke at a closed Communist Party meeting in Chicago at which Jack Kling, chairman of the Communist Party of Wisconsin was chairman. In his speech dedicated to Gil Green, a national officer of the Communist Party who was present but about to go to jail,[10] the petitioner emphasized the importance of following the Marxist line by getting more Party members to leave white-collar positions to go into the working-class movement (R. 308–310).

The petitioner contributed a number of articles to the "Party Forum," the official Party publication of the State of Illinois. His articles stressed the im-

[10] Gil Green was one of the top leaders of the Communist Party convicted of conspiring to violate the Smith Act in *United States* v. *Dennis*, 341 U. S. 494. Shortly after the meeting in June 1951, he became a fugitive from justice and so remained until February 27, 1956.

portance of the industrial concentration and educational programs of the Party. Also stressed was the importance of the Marxist-Leninist classics and the fact that the Party's educational program is aimed at equipping the membership with the knowledge and experience to adopt the most effective tactics in effecting the ultimate aims of Marxism-Leninism (Gov't. Exs. 57, 58, 59 60, 63, 64, 66).[11]

---

[11] In the December 1951 edition of Party Forum, petitioner stated (R. 375; Gov't. Ex. 64):

"We cannot carry out these responsibilities unless we achieve a greater knowledge of Marxist-Leninist and Stalinist teachings on the National Question. I refer to such classic works as 'Marxism and the National Colonial Question by J. Stalin, the National Question in Foundations of Leninism and the History of the CPSU.' These works, together with the new experiences that have been generated by the Chinese revolution and reflected in the works of Mao Tse Tung and Liv Shao-Chi, plus the Resolution of our Party on the Negro Question, must serve as guiding lights in approaching the Negro Question in the United States."

In another article in the same publication, he went on to state (R. 376–377):

"Perhaps one of the major reasons why we have not helped generate expanded mass activities in this period is the erroneous belief that the Party cannot make, relatively speaking, much progress until the storms surrounding us have subsided. * * *

* * * * * * *

"Let us remember that the Bolshevik Party (CPSU) in 1917 emerged from the Underground in February and took power in the short space of eight months. Most of the preparatory work for the seizure of power was done in the conditions of the Underground. Let us not forget that the Communist Parties of Europe, especially in France and Italy, won the leadership of the working class in the Underground partisan movement—a task they had not been able to accomplish prior to the Nazi occupation of their countries. * * *"

SUMMARY OF ARGUMENT

I

The evidence fully sustains the jury's findings that petitioner knew the Communist Party's unlawful purposes and personally intended their achievement.

A. Unable to dispute the admitted facts of his long, active membership and position of top leadership in the Party, petitioner makes no serious effort to argue that the evidence failed to establish his knowledge of the Party's purposes. Instead, he claims that the evidence showed the Party to be wedded to democratic processes, that there was a failure to prove the Party's teaching and advocacy of force and violence, and that his knowledge of the Party's purposes must for this reason have been lawful. But the evidence plainly justified the jury and the courts below in this case, like the juries and courts in every other Smith Act case, in concluding that the Party teaches and advocates force and violence.

It was shown that the Party follows, teaches, and advocates the principles of so-called Marxism-Leninism and that the use of force and violence to bring about the "dictatorship of the proletariat" is central among these principles. The Government proved the Party's program of severe indoctrination in these principles and rigid, quasi-military discipline of its members. And it was established that petitioner espoused and worked for these principles as a member of the Party's highest leadership and as a teacher in its training schools. The evidence leaves no doubt—it surely entitled the jury to infer—that

the Party teaches and advocates force and violence and that petitioner knew it.

B. The evidence was equally sufficient to show that petitioner, devoting twenty years to the Party as an aggressive member and leader, intended to achieve the Party's objective of forceful and violent overthrow as speedily as possible. Petitioner points out that it is possible to be a member of an organization without being devoted to its ultimate aims. But it was for the jury to decide whether this possibility, always unlikely within the framework of stringent Communist Party discipline, had been refuted beyond a reasonable doubt by the evidence against petitioner. The jury's conclusion that petitioner in fact intended to achieve the Party purposes for which he worked so long and devotedly is solidly grounded in the record.

II

The membership provision of the Smith Act is constitutional on its face and as applied in this case. In the Government's brief in *Scales* v. *United States*, No. 29, pp. 23–26, 33–48, we have shown, following *Dennis* v. *United States*, 341 U. S. 494, the error in the effort to nullify the statute on its face, and we refer to that discussion on this aspect of the argument here.

As to the application of the statute in this case, it is clear that, if membership in the Party, with knowledge of its unlawful purposes and intent to achieve them, may ever be punished, petitioner is at the vital core of the class Congress may reach. Working as one of the Party's very highest leaders,

petitioner was shown to be one of its most dangerous constituents. The fact that he alone could not effect the violent overthrow of the Government is no ground for ignoring or denying the clear and present danger he represents. To view him alone, without the combination and concert from which the very meaning as well as the menace of his membership derives, would wholly distort the plain facts on which Congress could and did act.

During the three years preceding the indictment, petitioner reached the level of national leadership in the Party and continued to work actively for its objectives. Though the evidence showed no express declarations in this period stating his advocacy of force and violence in so many words, it was shown that he had never departed from or ceased laboring for this objective.

There is no merit in the suggestion that world conditions had so changed by the period of this indictment (May 1951–May 1954) that the clear and present danger found in *Dennis* (where the indictment covered three years from 1945 to 1948) no longer existed. In the period involved here, the cold war turned hot in Korea and there was not—nor is there to the present day—any such relaxation of international tension as to diminish in any substantial measure the threat the Communist Party and its members pose. *United States* v. *Flynn*, 216 F. 2d 354, 367 (C. A. 2), certiorari denied, 348 U. S. 909.

III

Petitioner laid no foundation of any kind for his motion to have the Government produce for the trial court's inspection a report the witness Brzek had made to the Federal Bureau of Investigation. Moreover, the motion was not made until after the witness had left the stand and the Government had rested its case except for "loose ends." (An earlier motion for such inspection, more timely made, had been granted by the trial judge.)

In these circumstances, petitioner errs when he relies on *Gordon* v. *United States,* 344 U. S. 414, and argues that the denial of the motion with respect to Brzek was reversible error. In *Gordon,* as this Court stressed (p. 418), a proper foundation was laid through cross-examination "showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important, and material matters * * *." No comparable basis for the motion existed here. Under the authorities reviewed in the Government's brief in *Jencks* v. *United States,* No. 23, this Term, Point I, to which reference is made here, it seems clear that the trial judge has a large discretion with respect to motions of the kind here in issue. Denial of the motion in this case was no abuse of that discretion.

IV

The portions of the evidence to which petitioner objects were properly admitted to show the doctrines and objectives of the Communist Party and petitioner's knowledge and intent.

A. The witness John Lautner, whose long career as a high-level functionary in the Party until 1950 closely paralleled petitioner's own, was well qualified to testify as an expert on the Party's principles and purposes. Since the nature of the Party was a material issue, his testimony was relevant and admissible. *United States* v. *Dennis,* 183 F. 2d 201, 229 (C. A. 2), affirmed, 341 U. S. 494. It was for the jury to decide whether Lautner's testimony and the other evidence proved that the Party taught and advocated force and violence. There was, of course, the further question whether petitioner knew this, but the existence of this additional problem in no way precluded use of Lautner's testimony to prove the Party's character. Nor is there substance to the claim that Lautner's testimony was hearsay. The issue was not whether the Party doctrines to which he testified were true; the issue was what those doctrines were. See *United States* v. *Mesarosh,* 223 F. 2d 449, 454 (C. A. 3), pending on certiorari, No. 20, this Term.

B. The testimony of Frank S. Meyer, part of the evidence portraying petitioner's twenty-year career in the Party, showed petitioner's activities as an active member and teacher from 1938 to 1942. Since knowledge once acquired tends to persist, this evidence, part of the unbroken pattern of petitioner's

earlier and later activities as an authoritative Marxist-Leninist teacher, served to demonstrate petitioner's knowledge of the Party's doctrines and purposes. The claim of remoteness was a matter for the trial judge's discretion, and his ruling scarcely approaches an abuse warranting reversal. *United States* v. *Dennis, supra,* 183 F. 2d at 231; *United States* v. *Mesarosh, supra,* 223 F. 2d at 455.

C. The writings known as the Marxist-Leninist "classics" were proved to supply the bedrock of Communist Party doctrine and the core of the Party's program and teachings. They were, accordingly, properly received in evidence as materials which "lend considerable support to the charge" that the Party teaches and advocates revolution by force and violence. See *Schneiderman* v. *United States,* 320 U. S. 118, 153.

V

The trial court was correct in instructing that, in order to convict, the jury must find that the Communist Party as such taught and advocated force and violence. Petitioner contends that the instruction should have referred, not to the teaching and advocacy of the Party, but to that of "a majority, or at least a substantial proportion," of the Party's members. This novel argument, which would make Smith Act charges unprovable as a practical matter and would render erroneous every conviction under the Act beginning with *Dennis,* has only the flimsiest support in pure semantics and is refuted by both good sense and legislative history.

The argument is thought to follow from the reference in the statute to any "society, group, and *assembly of persons who teach* * * *." Located as it is after the expression "assembly of persons," the pronoun "who" was a linguistically appropriate one. But the legislative history leaves no doubt that the quoted phrase meant nothing other than a "society or group * * * *which* advocates"—the latter phrase being the one used in the reports to describe the statutory language in question. S. Rep. No. 1796, 76th Cong., 3d sess., p. 2; H. Rep. No. 2683, 76th Cong., 3d sess., p. 8.

Plainly, what concerned Congress was organizations, as such, engaged in the proscribed teaching and advocacy. And it is clear, particularly with the totalitarian groups with which the Smith Act is concerned, that the nature of an organization's doctrines is discoverable from what its leaders, teachers, and policy-makers teach and advocate, not by the unmanageable task of trying to prove in court what all, or most, members teach and advocate. The trial court's instructions, following this sensible interpretation, were correct.

VI

For the reasons outlined in the Government's brief in *Scales* v. *United States*, No. 29, this Term, pp. 27, 51–56, we submit that petitioner is mistaken in his argument that Section 4 (f) of the Internal Security Act of 1950 amends the membership clause of the Smith Act so as to immunize from prosecution members of the Communist Party who know the Party's purposes and intend their achievement.

VII

Our brief in *Scales*, pp. 77–78, also answers the contention that, because Congress found in the Internal Security Act of 1950 and the Communist Control Act of 1954 that the Communist Party presents a danger in its conspiratorial preparation for and advocacy of violent revolution, it must be conclusively presumed, without evidence or inquiry of the jurors, that petitioner could not have had the independent jury verdict required by the trial court's instructions.

ARGUMENT

I

THE EVIDENCE FULLY SUSTAINS THE VERDICT

In denying petitioner's motion for a directed verdict of acquittal, Judge Sullivan said (R. 594):

> * * * I wished to make an exhaustive study of the evidence submitted, with a view to using my power under Rule 29 of the Federal Rules of Criminal Procedure to direct a judgment of acquittal if it should appear that the verdict of the jury was not supported by evidence from which a reasonable mind could conclude guilt beyond a reasonable doubt.
>
> This study has convinced me that the verdict of the jury was supported by the required evidence.

Disputing this conclusion, affirmed by the unanimous court below, petitioner undertakes the extraordinary burden of seeking to overturn the jury's verdict here, arguing that the evidence was insufficient with respect

to both (a) his knowledge of the Party's purpose of violent revolution and (b) his intent to achieve that purpose. We submit that the proof on these issues was overwhelming and amply justified the jury's conclusion that petitioner was guilty beyond a reasonable doubt.

A. THE PROOF OF PETITIONER'S KNOWLEDGE

Acknowledging his role as a leader at the very highest levels of the Communist Party, the petitioner, on the issue of his knowledge, makes no serious effort to claim ignorance of the Party's doctrines and objectives. Instead, the attempt in his argument on this point (Br. 31–41) is primarily to show that the Party itself "advocated a peaceful path to socialism in this country" (Br. 40 and *passim*), so that he could have had only innocent knowledge of this innocent purpose. The jury's contrary view finds powerful basis in the record.

As noted in our brief in *Scales* v. *United States,* No. 29, pp. 57–58, all of the many courts and juries which have considered this question under the Smith Act have agreed that the Communist Party teaches and advocates the violent overthrow of the Government as speedily as circumstances may permit. The substantially similar evidence in this case warranted the same conclusion.

Spanning the two decades of petitioner's career as a constantly rising Communist up to the date of the indictment, the evidence showed clearly how the Party patterned its doctrines and programs minutely on the tenets of so-called Marxism-Leninism (Appendix, *in-*

fra, pp. 50–61). The now familiar principles of this dogma were presented to the jury—the belief in minority seizure of power (*infra,* pp. 52–53), the need for "smashing" the state machine (*infra,* pp. 52–53), "the law of violent proletarian revolution" (*infra,* p. 53), the objective of "forcible destruction of the bourgeois state machine" (*infra,* p. 53), the ridiculing of the notion "that such a revolution can be carried out peacefully" (*infra,* p. 53), the role of strikes in fomenting revolution (*infra,* p. 59), and, above all, the mission of the disciplined, "democratically centralist," conspiratorial, infiltrating Party as the instrument and "vanguard" of the violent revolution (*supra,* pp. 14, 15–16; *infra,* pp. 54, 58–59). The evidence showed beyond question that these prescriptions for violence were not merely intellectual abstractions for academic discussions of the "classics," but were the basic, practical, detailed guidebooks on which the Party grounded its teaching, its advocacy, and its programs.

The Government proved that the Party, through its leaders and teachers, drilled and rehearsed its members in the Marxist-Leninist program for violent revolution. In formal, full-time schools, the Party gave training in Marxist-Leninist strategy and tactics, emphasizing the military discipline required of members, the need to anticipate and prepare for bloodshed (*supra,* pp. 8–11, 13, 14–16; *infra,* pp. 50, 55, 56, 59). The Bolshevik minority's violent seizure of power in Russia was constantly held up as a lesson and a guide, to be learned and followed whenever an opportunity should present itself (*supra,* pp. 13, 15, 18).

In the evidence thus briefly resummarized there is no place left for petitioner's claim that the jury was not free to find that the Party taught and advocated violent revolution. And any suggestion that petitioner lacked knowledge of the Party's purposes falls at the same time. As shown in detail in the Statement (*supra*, pp. 4–20), he was for many years a loyal and active member, rising by the time of the indictment to the very highest levels of Party leadership. For much of this period, his knowledge of and loyalty to Party doctrine were clear and reliable enough for him to be a leading teacher of other members at Party schools and meetings. It was demonstrated that he repeatedly endorsed and enjoined upon others the Party principles of military discipline and preparation for violence (*supra*, pp. 13, 14–16, 18, 19–20). Having failed in his implausible efforts to establish the Party as a peaceable organization eschewing the doctrines of force and violence, petitioner can scarcely hope to overturn the finding that, in his place of high leadership, he knew fully the Party's true purposes.

Concentrating as he does on the effort to discredit the jury's verdict as to the nature of the Party, petitioner states (Br. 35–36) that prosecution witness Lautner actually testified to the belief of the Party in a peaceful path to socialism. The statement he quotes for this startling observation is Lautner's concession on cross-examination that, according to the Party, if socialism could not be peacefully established in the United States, the only reason would be the attempt of the "trusts and monopolies" to prevent

it by force and violence. But this answer was, of course, perfectly consistent with the unequivocal testimony of the same witness that Marxist-Leninist principles were the Party's guide, and with the central premise of these principles that the bourgeoisie—the "trusts and monopolies"—would never surrender to socialism without force and violence. The question of which party as aggressor begins the contest of force and violence has numerous contemporary illustrations. The jury could certainly have concluded—was almost compelled to conclude—from the evidence here that the Party teaches and plans for force and violence, whatever the supposed merit of its view that this is necessary because force and violence would in any event be used against it by its enemies.

Petitioner's case is not improved by the complaint (Br. 36–37) that the jury's verdict rejects the professions in a book by William Z. Foster and in the Party's Constitution of adherence to peaceful, electoral procedures as the path to socialism. These very writings reiterate the Party's adherence to Marxist-Leninist principles,[12] and there was more than sufficient basis in this fact and the other evidence on which the jury could conclude that the occasional endorsement of democratic processes did not reflect the Party's true doctrines and objectives.[13] The most

---

[12] Foster, *History of the Communist Party of the United States*, pp. 415, 521 (Deft. Ex. 3, R. 476–479); Communist Party Constitution, Preamble and Art. III, Sec. 5 (Gov't. Ex. 45, R. 479–480).

[13] Petitioner even invokes the speech of Soviet Communist Party Secretary Khrushchev before the 20th Congress of the So-

that can be said is that these isolated declarations eschewing force and violence created a measure of conflict in the evidence, a matter peculiarly within the jury's province.

B. THE PROOF OF PETITIONER'S INTENT

Petitioner argues (Br. 43) that the court below erred in sustaining his conviction because it viewed his active, leading membership in and devotion to the Communist Party, together with his knowledge of the Party's principles and its program of severe discipline over its members, as constituting evidence from which the jury could have found his unlawful intent to achieve the Party's unlawful purposes. In support of this contention, he points out that individuals "may be attracted" (*ibid.*) to such an organization because of belief in some immediate objective rather than belief in and desire to attain the group's ultimate goals. But this is only an argument for the jury to have considered, and one which plainly deserved rejection on this record.

---

viet Party (*New York Times*, February 15, 1956) to show the "evolutionary character of Marxist thought" and the belief in "the non-inevitability of war" (Pet. Br. 39, fn. 24). The following passage from that speech is illuminating:

"The enemies are fond of depicting us, Leninists, as supporters of violence always and in all circumstances. It is true that we recognize the necessity for the revolutionary transformation of capitalist society into Socialist society.

"This is what distinguishes revolutionary Marxists from reformists and opportunists. There is not a shadow of a doubt that for a number of capitalist countries the overthrow of the bourgeois dictatorship by force and connected sharp aggravation of the class struggle is necessary."

Certainly, petitioner's role as a devoted adherent and top leader justified reasonable men in believing he intended the accomplishment of the Party's objectives. In the three years preceding the indictment, petitioner was elevated to the Party's National Committee, its top governing body (R. 334–335; Gov't. Ex. 61). In this period he worked as a leader, spoke as a leader, and associated closely with other leaders, including at least one whose conviction had been finally affirmed by this Court in *Dennis* (R. 308–310, 374–379, 379–380; Gov't. Exs. 59, 64, 65, 66). Behind this period lay a long career in the Party, teaching and working for the Party's principles of force and violence, as the evidence repeatedly and specifically showed (*supra,* pp. 4–20). In this evidence there was more than ample basis for inferring that he intended to achieve what his consistent efforts appeared to be designed for. Cf. *American Communications Ass'n.* v. *Douds,* 339 U. S. 382, 411. To be sure, the jury could conceivably have been persuaded that—despite all he did for the Party and despite his teachings and statements prior to and after May 1951—petitioner did not in fact intend, during the indictment period (May 1951–May 1954), to bring about what the Party sought. But, having failed with the jury, this extravagant hypothesis is clearly no justification for overturning the verdict here.

II

THE MEMBERSHIP PROVISION OF THE SMITH ACT IS CONSTITUTIONAL ON ITS FACE AND AS APPLIED IN THIS CASE.

In our brief in *Scales* v. *United States*, No. 29, pp. 23–26, 33–48, we have undertaken to refute the contention that, despite the decision in *Dennis* v. *United States*, 341 U. S. 494, the membership provision of the Smith Act may be held invalid on its face. Respectfully referring to that discussion in answer to the arguments of the present petitioner, we consider here only his claim that the provision is unconstitutional as applied in this case.

We submit that, unless petitioner is correct in arguing that the membership provision may never be applied at all, he is surely wrong in contending that it could not apply to him. Unless, as petitioner would insist, every member must be viewed in isolation, ignoring the elements of concert and combination which comprise the essence of Party membership, the petitioner is unquestionably at the vital center of the class against which Congress could act. We have answered in our brief in *Scales* (pp. 48–51) the palpably fallacious suggestion that, because no member alone is able to effect a violent revolution, every member must be immune from prosecution. And petitioner's role among the most powerful and influential of all members leaves no basis for the claim that, as applied to him, the statute fails the test of clear and present danger.

It is true, as petitioner states (Br. 57), that the evidence covering the three years preceding his indictment showed no declarations by him advocating in so many words the overthrow of the Government by force and violence. The evidence did show, however, that it was during this period, on May 26, 1951, that he was elevated to the National Committee, the highest level of Party leadership (R. 334–335; Gov't. Ex. 61). During this period, in his role of top leadership, it was shown that he continued to preach adherence to the "Marxian line," urging his followers to get into the labor movement and thus to honor their colleague Gil Green, the leader convicted in the *Dennis* case who was about to go to jail (R. 310).[14] Again in June 1951, he spoke for the Party effort, vowing that, like David slaying Goliath, the Party would defeat its enemies though its weapons seemed slighter (R. 371–372). During this same period, he wrote for the Party on the importance of adhering to Marxist-Leninist principles and on the need to learn from and follow the underground experience of the Bolshevik and other Communist Parties (Gov't Exs. 57, 58, 59, 60, 63, 64, 66).

Appraising petitioner's position and activities, against the background of voluminous evidence of what petitioner and the Party consistently advocated and worked for at all times, the Court could conclude that petitioner—top Party leader and indoc-

[14] The cited speech, at the meeting to honor Gil Green, was given in mid-June of 1951, after this Court's affirmance in *Dennis*. Shortly afterward, Green became a fugitive, and he did not actually begin to serve his term until February 23, 1956.

trinator—was not "dangerous" (Pet. Br. 57) only by concluding that the Party itself was not dangerous. As we have argued, such a conclusion is no more required here than it was in the *Dennis* case.

Nor is petitioner aided in his claim that the statute was unconstitutionally applied by his more extensive argument (Br. 57–60) that world conditions had so changed since *Dennis* as to preclude a finding of clear and present danger in this case. The three years prior to the indictment (May 14, 1954) began just before the outbreak of fighting in Korea. For two-thirds of this period, the United States was engaged in armed combat against Communist North Korea and forces from Communist China, encounters which resulted in 33,629 American battle deaths.[18] True, there has been a truce in Korea and other events have given some ground for hope that peace may be preserved. But it scarcely requires argument that the period here in question, and extending to the present day, is not constitutionally less fraught with clear and present danger than was the period from 1945 to 1948 considered by this Court in *Dennis* in 1951. Petitioner's contrary view was shortly and sufficiently answered in *United States* v. *Flynn*, 216 F. 2d 354, 367 (C. A. 2), certiorari denied, 348 U. S. 909, where the court said that "if the danger was clear and present in 1948, it can hardly be thought to have been less in 1951, when the Korean conflict was raging and our relations with the Communist world had moved from cold to hot war."

[18] *The World Almanac*, 1956, p. 741.

III

THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING PETITIONER'S MOTION THAT THE COURT INSPECT THE REPORT OF THE WITNESS BRZEK

Petitioner complains (Br. 61–66) that it was error for the trial court to deny his motion to require the Government to produce for the court's inspection a report made to the Federal Bureau of Investigation by the witness Brzek concerning a Communist Party school conducted at Lake Ivanhoe, Wisconsin, in July 1947. We think it clear, however, that the trial judge, who had granted a prior motion of this kind during the trial, which was at least presented at a more appropriate time,[16] was well within the limits of his proper discretion in denying the one now in question.

The petitioner laid no foundation of any kind for the inspection he sought. No effort was made to explore by questioning the witness on the stand the possibility of any such contradiction as petitioner says he hoped might be revealed by an inspection of the reports. Indeed, the inspection was not even re-

[16] Earlier in the case, the trial court had inspected reports made to the Federal Bureau of Investigation by another prosecution witness, Czarnowski (R. 424–425, 442). The request was made during the cross-examination of the witness. After inspection of the reports, the court stated that it had found no contradiction between the testimony of the witness and the reports, and denied the petitioner's request that he be permitted to inspect them (R. 469–470). Thereafter, the reports were sealed and made a part of the record of the case as Court exhibits 1, 2, 3 (R. 550). No complaint is tendered by petitioner concerning this earlier episode. Compare the argument of the petitioner in *Scales* v. *United States*, No. 29, this Term, Pet. Br. 43–44.

quested until after the witness had been excused and the Government had concluded its presentation of evidence and had rested its case except for "loose ends" (R. 468). There is thus, as the court below held (R. 628–629), a whole world of difference between this case and *Gordon v. United States*, 344 U. S. 414, which petitioner vainly invokes. There, this Court noted, at 418:

> By proper cross-examination, defense counsel laid a foundation for his demand by showing that the documents were in existence, were in possession of the Government, were made by the Government's witness under examination, were contradictory of his present testimony, and that the contradiction was as to relevant, important and material matters which directly bore on the main issue being tried * * *.

Here, there was nothing approaching that critical foundation, particularly the showing of inconsistency, which was at the heart of the decision in *Gordon*. In addition, as in *Goldman* v. *United States*, 316 U. S. 129, the notes had not been used in court, another distinguishing factor noted in *Gordon*. 344 U. S. at 419, fn. 10.

In our brief in *Jencks* v. *United States*, No. 23, this Term, Point I (see also the Government's brief in *Scales* v. *United States*, No. 29, this Term, pp. 74–77), we review the precedents and the principles governing this matter. As we show there, the question is one confined largely to the discretion of the trial judge. In the circumstances of this case—given the lack of any foundation and the tardiness of the

motion—we think it clear that this discretion was not abused.

IV

THE COURT BELOW PROPERLY UPHELD THE TRIAL COURT'S ADMISSION OF TESTIMONY SHOWING THE DOCTRINES AND OBJECTIVES OF THE COMMUNIST PARTY AND PETITIONER'S LONG CONNECTION WITH THEM

A. TESTIMONY OF JOHN LAUTNER

In the first of the three items of evidence of which petitioner complains (Br. 67–74), the witness John Lautner was permitted to give opinion testimony as to the aims and objectives of the Communist Party. Lautner was a high-level Party functionary whose membership dated back some twenty years at the time of his break with the Party in 1950. He joined the Party in 1929, within a year of the time the petitioner joined. In many respects his background in the Party is similar to that of the petitioner (see fn. 17, p. 50, *infra*). Although the petitioner remained for the most part in the Chicago area and Lautner was transferred to different positions in the Party organization throughout the country, both progressed through the ranks to high positions of Party leadership. Both held positions on a Section and State level and both were raised to the national leadership of the Party. Both received thorough indoctrination in the Party program and in the revolutionary principles of Marxism-Leninism. Both were instructors in Party schools established for the training of new Party leaders. Both were in a position to know and understand the aims and objectives of the Party, and when they taught

classes and spoke at meetings they were teaching and speaking as official spokesmen for the Communist Party.

Apart from the close parallel between his career in the Party and petitioner's, the record clearly established Lautner's qualifications to speak as an expert on the Party's principles and objectives. As the Court of Appeals for the Fourth Circuit recently said in a similar case (*Frankfeld* v. *United States*, 198 F. 2d 679, 689, certiorari denied, 344 U. S. 922):

> * * * It is difficult to see * * * how better evidence of the teachings and purposes of a party could be obtained than from the testimony of those who heard and participated in the teachings sponsored by the party. In so far as the testimony related to the fact of the teachings of the party, its admissibility does not admit of argument. In so far as it involved matter of opinion, this related to a matter involving specialized knowledge, as to which the opinion of experts is unquestionably admissible, even though it relates to a matter which is for the decision of the jury.

To the same effect see *United States* v. *Dennis*, 183 F. 2d 201, 229 (C. A. 2), affirmed, 341 U. S. 494.

It is clear, of course, that the nature of the Communist Party, its teachings and objectives, was a material issue in the case. It is equally clear that this issue could properly be explored by inquiring of someone in a position to know what the Party stood for and how it functioned. Lautner met this test beyond question.

It is neither correct in fact nor relevant on the question of admissibility here considered to argue (Pet. Br. 67) that there was no evidence showing petitioner's "agreement with the views which Lautner expressed." Of course, petitioner's knowledge of the Party's purposes was *another* material issue in the case, proved, as we have shown (pp. 4–20, 29, 31, *supra*) and he scarcely denies, beyond possibility of doubt. Here, we are concerned with what those purposes actually were, and the testimony petitioner chooses to dub Lautner's "views" was properly admitted on this material issue.

By the same token, petitioner fails in his contention (Br. 67–68) that Lautner's testimony should have been excluded as hearsay. Testifying like any other expert, Lautner testified to objective facts—the doctrines and purposes of the Communist Party. The question was not whether these doctrines and purposes were "true," but what they were. See *United States* v. *Mesarosh*, 223 F. 2d 449, 454 (C. A. 3), pending on certiorari, No. 20 this Term. In this light, it is obviously futile to claim (see Pet. Br. 68–70) that similar testimony was admitted in cases like *Dennis* and *Frankfeld* only as an exception to the hearsay rule resting upon the conspiracy charges there. The pertinent passages from those cases, cited above (*supra*, p. 41), fail to support this suggestion. And it would be clear, in any event, that the hearsay objection is as groundless here as it was there.

B. TESTIMONY OF FRANK S. MEYER

As we have shown (*supra*, pp. 4–20), the evidence traced petitioner's career and rise in the Party for a period of some twenty years up to the date of the indictment. What emerged from the evidence was a vivid picture of his intimacy with and consistent devotion to the Party's program aimed at overthrow of the Government by force and violence.

From among the evidence which made up this account petitioner selects the testimony of Frank Meyer and attacks it as relating to a time too remote in the past (Br. 71–73). We note at the outset that it is not accurate to describe Meyer's testimony (see Pet. Br. 72) as relating solely to events before the passage of the Smith Act in 1940. Actually, the evidence shows that the petitioner taught in a considerable number of classes, in inner-Party training schools as well as at the Chicago Workers School, all under the supervision of Meyer, from 1938 until 1942 (R. 81–82; Gov't. Exs. 33, 34, 35, 36, 37). Throughout this period, petitioner and Meyer worked closely together, discussing the content of their Marxist-Leninist courses and their presentation, although it is true that they had an unusual number of meetings in early 1940 to make transformations required by the then new *History of the Communist Party of the Soviet Union* (R. 96; Gov't. Ex. 22).

Passing this point, it seems clear that petitioner's claim of remoteness affords no basis for reversal. It is well known in fact and to the law that knowledge once acquired tends to be retained. Here, where

the nature of petitioner's knowledge was a material issue, the consistent pattern of what he learned and taught was properly traced over the long period covered by the evidence. Whether a particular item should have been excluded as too remote was a matter peculiarly for the judgment of the trial judge in his rulings on the scene as to the general problem of relevancy.

This conclusion has the closely apposite support of other decisions which have rejected similar arguments in prosecutions under the Smith Act. Thus, the Second Circuit said in *United States* v. *Dennis*, *supra*, 183 F. 2d at 231:

> How far back of the commission of the crime one may go is a matter of degree, and within the general control of the judge over the relevancy of evidence. In the case at bar, there is not the least reason to hold that his discretion was abused. The same doctrine applies to evidence occurring before the acts charged had become a crime at all * * *.

Similarly, in *United States* v. *Mesarosh*, 223 F. 2d 449, 455 (C. A. 3), pending on certiorari, No. 20 this Term, the court said:

> The prosecution's evidence contained links in Party teachings sufficient for the jury to find a continuity of Party purposes and teachings through the 1930's up to the indictment period. * * * Such evidence * * * did not * * * violate the hearsay rule, nor was it too remote since a sufficient continuity of participation by [defendant] in Party activities was shown.

The same sound basis for sustaining the trial court's discretionary ruling exists here.

C. THE MARXIST-LENINIST "CLASSICS"

That the trial court properly admitted the proffered excerpts from the Marxist-Leninist "classics" seems abundantly clear. These writings, which were shown to provide the very core of the Party's doctrine, were in the main the same as those which have been received in prior Smith Act prosecutions involving Communist Party leaders, *e. g.*, *United States* v. *Dennis, supra; United States* v. *Flynn, supra; Frankfeld* v. *United States, supra.* And in *Schneiderman* v. *United States,* 320 U. S. 118, 153, apparently recognizing both the propriety and the weight of such writings as evidence, this Court observed that they "lend considerable support to the charge" that revolution by force and violence is a principle of the Communist Party. Because the nature of the Party was a key issue in the case, and because the Party was shown to follow, rely upon and teach the doctrines laid down in the "classics," their use in evidence was plainly proper.

There is no merit in the suggestion (Pet. Br. 73–74) that the testimony of the witnesses Lautner and Meyer supplied the only basis for admitting these writings. Of course, even if it were accurate, this contention would make no difference since, as we have shown (*supra,* pp. 40–45), the Lautner and Meyer testimony was admissible and they were clearly qualified to authenticate these documents. We note, however, that

other witnesses (Brnek, R. 458; Czarnowski, R. 338), as well as documents of the Party itself (*e. g.*, Gov't. Exs. 53 and 54), amply proved the role of these writings as an integral part of the Party's program.

V

THE TRIAL COURT CORRECTLY INSTRUCTED THAT THE TEACHING AND ADVOCACY CHARGED IN THE INDICTMENT REFERS TO THE TEACHING AND ADVOCACY OF THE COMMUNIST PARTY

In a novel and highly unrealistic argument, petitioner complains (Br. 75–76) of the instruction (R. 577) that, before it could convict, the jury must find "that the Communist Party of the United States was an organization which taught and advocated" the violent overthrow of the Government. The instruction, petitioner says, should have required a finding, not as to the Party as such, but that "a majority, or at least a substantial proportion," of the Party's members engaged in such teaching and advocacy. This is said to follow from the fact that the statute and the indictment both refer to membership in a "society, group, and *assembly of persons who* teach and advocate * * *."

The argument has little weight even on the arid semantic premises which alone are thought to support it. It seems obvious that since it followed immediately upon the words "society, group, or *assembly of persons*", the pronoun "who" rather than "which" was a linguistically appropriate one to precede "teach, advocate," etc. But petitioner's wholly unworkable

conclusion—that "a majority, or at least a substantial proportion" of the individual members must be proved to have engaged in the proscribed teaching or advocacy to bring the organization within the described class—hardly follows from this grammatical fact. Indeed, the kind of mechanically verbal reasoning petitioner proposes from the words "persons who" would not lead so much to his position as to the even more patently absurd proposition that the Government must prove that *all* members of the organization are "persons who" teach or advocate violent overthrow of the Government.

If either of these possibilities actually represented a fair or sensible reading of the statute, it would follow that probably every conviction under the Smith Act, from *Dennis* on, has been erroneous. For the nature of the organization has been in issue each time. And the Government has never undertaken, or been required to undertake, the manifestly impossible and pointless task of proving that all—or, as petitioner would have it, "a majority, or at least a substantial proportion"—of the members engaged in the teaching and advocacy in question.

If grammar alone leaves some substance in petitioner's argument, legislative history dispels it. In the Senate Report on the bill which contained the provisions known as the Smith Act, the portion of interest here said (S. Rep. No. 1796, 76th Cong., 3d sess., p. 2):

> Section 2 makes it unlawful for any person to * * * organize any society or group (or

> knowing the purposes thereof to affiliate with any such society or group) *which advocates,* the overthrow or destruction by force or violence * * *. [Emphasis added.]

The Conference Report (H. Rep. No. 2683, 76th Cong., 3d sess., p. 8) referred identically to the organizations in question as being "any society or group * * * *which* advocates * * *."

Thus, it is clear that petitioner's argument rests on the merest linguistic happenstance, and that the phrase "society, group or assembly of persons *who*" advocate was meant to be identical in effect and interchangeable with "society or group * * * *which* advocates * * *." It is equally clear that Congress was concerned with the teaching and advocacy of the organizations as such, to be determined in the only way such teaching and advocacy can be found and characterized—namely, through the teaching and advocacy of the leaders, policy-makers, and teachers who lay down the programs to be learned and followed by all the members.

The trial court's instructions followed this sensible and workable construction of the statute. Petitioner's alternative, which would pervert its meaning and prevent its functioning, was properly rejected.

VI

SECTION 4 (F) OF THE INTERNAL SECURITY ACT OF 1950 DOES NOT AMEND THE "MEMBERSHIP CLAUSE" OF THE SMITH ACT SO AS TO EXEMPT MEMBERSHIP WITH KNOWLEDGE AND INTENT IN THE COMMUNIST PARTY

This point is discussed in our brief in *Scales* v. *United States*, No. 29, this Term, pp. 27, 51–56, and we respectfully refer to that material in answer to the identical problem raised by the petitioner (Pet. Br. 76–84) in the instant case.

VII

THE CONGRESSIONAL FINDINGS IN THE INTERNAL SECURITY ACT OF 1950 AND THE COMMUNIST CONTROL ACT OF 1954 DID NOT PRECLUDE A FAIR TRIAL

This final question, too, is common to this case (see Pet. Br. 84–86) and *Scales*, No. 29, and we again refer to our brief in the latter (pp. 77–78) for a statement of the Government's position.

CONCLUSION

It is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

J. LEE RANKIN,
Solicitor General.

WILLIAM F. TOMPKINS,
Assistant Attorney General.

HAROLD D. KOFFSKY,
WILLIAM F. O'DONNELL,
LAWRENCE P. MCGAULEY,
Attorneys.

SEPTEMBER 1956.

APPENDIX

EVIDENCE OF THE COMMUNIST PARTY'S UNLAWFUL PURPOSES

The uncontroverted evidence establishes that in July 1945, at a special national convention held in New York City, the Communist Party of the United States reconstituted itself "upon the principles of scientific socialism, Marxism-Leninism" (R. 205, 206, 263; Gov't. Ex. 45). In order to implement the reconstitution and revitalize its members, the Party instituted an intensive program of Marxist-Leninist education nationally as well as in the Illinois District (R. 41–43, 162, 435, 436, 450).

The witness Lautner,[17] whose Communist Party career closely paralleled that of the petitioner, testified

[17] Lautner joined the Party in 1929 and with the exception of his wartime service in the Military Intelligence Branch of the United States Army, from 1942 until 1945, devoted his full-time efforts to Party work until his expulsion in 1950. During the greater part of his Party career he was a high-ranking paid functionary. He attended the National Training School in 1930 and 1941 (R. 133, 143); was a District Organizer in West Virginia from 1936 to 1940 (R. 140–141); taught Party classes from 1946 to 1948 (R. 162); attended the National Convention of the Party in 1936, 1938, 1940, 1942, 1945, and 1948 (R. 150–151); was the head of the New York State Review Commission from 1947 until 1950; and was a member of the National Review Commission from 1948 until 1950 (R. 161). In September 1950, he volunteered his services to the Department of Justice. Since January 1951, the Department of Justice has called upon his services on numerous occasions with regard to matters relating to the Communist Party and its members. In connection with his service he has been remunerated at the rate of twenty-five dollars a day plus an addi-

that the principles of Marxism-Leninism are to be found in the writings of Marx, Engels, Lenin, and Stalin. They constitute the theory and tactics of the proletarian revolution in general and of the dictatorship of the proletariat in particular (R. 205–206; Gov't. Ex. 19). Some of the books in which the principles of Marxism-Leninism are to be found are *Foundations of Leninism* by Stalin (Gov't. Ex. 19), *Problems of Leninism* by Stalin (Gov't. Ex. 21) *State and Revolution* by Lenin (Gov't. Ex. 23) and *History of the Communist Party of the Soviet Union (Bolshevik)* (R. 206). They are also to be found in the writings of the leaders of the Communist Party of the United States, as in William Z. Foster's *On The Struggle Against Revisionism* (Gov't. Ex 48; R. 206).[18]

The following excerpts from these exhibits are particularly pertinent:

> *Foundations of Leninism*, Gov't. Ex. 19:
>
> Some say that Leninism is the application of Marxism to the peculiar conditions of the situation in Russia. This definition contains a particle of truth, but not the whole truth by any means. Lenin, indeed, applied Marxism to Russian conditions and applied it in a masterly way. But if Leninism were only the applica-

---

tional nine dollars a day per diem on the days when he was away from his home station.

[18] Lautner also testified that in these books and pamphlets there are passages which, more than others, establish these basic principles, specifically pp. 9, 10, 20–23, 44–46, 48, 50, 54–57, 103, 109, and 115 in *Foundations of Leninism* (Gov't. Ex. 19); pp. 9, 10, 19, 20, 23, 33, 52, 53, in *State and Revolution* (Gov't. Ex. 23); pp. 56–57 in *On The Struggle Against Revisionism* (Gov't. Ex. 48); pp. 167–168, 353–355 in *History of the Communist Party of the Soviet Union* (Gov't. Ex. 22); pp. 19–22, 25, and 26 in *Problems of Leninism* (Gov't. Ex. 21).

tion of Marxism to the peculiar situation in Russia it would be a purely national and only a national, a purely Russian and only a Russian, phenomenon. We know, however, that Leninism is not merely a Russian, but an international phenomenon rooted in the whole of international development.

* * * * *

What, then, in the last analysis, is Leninism?

Leninism is Marxism of the era of imperialism and of the proletarian revolution. To be more exact, Leninism is the theory and tactics of the proletarian revolution in general, the theory and tactics of the dictatorship of the proletariat in particular. [Pp. 9–10.]

* * * * *

First dogma: concerning the conditions for the seizure of power by the proletariat. The opportunists assert that the proletariat cannot and ought not to take power unless it constitutes a majority in the country. No proofs are adduced for there are no proofs, either theoretical or practical, than can justify this absurd thesis [*id.*, p. 22].

"Today," said Lenin "in 1917" in the epoch of the first great imperialist war, this qualification made by Marx is no longer valid. Both England and America, the greatest and last representatives—in the whole world—of Anglo-Saxon "liberty," in the sense that militarism and bureaucracy were absent, have slid down entirely into the all-European, filthy, bloody morass of military—bureaucratic institutions to which everything is subordinated and which trample everything underfoot. Today, both in England and America the preliminary condition for every real people's revolution is the smashing, the destruction of the "ready made state machine" (brought in those countries between 1914 and 1917, to general "European"

perialist perfection).. (Selected Works, Vol. VII, p. 37.)

In other words, the law of violent proletarian revolution, the law of the smashing of the bourgeois state machine as a preliminary condition for such a revolution, is an inevitable law of the revolutionary movement in the imperialist countries of the world.

Of course, in the remote future, if the proletariat is victorious in the most important capitalist countries, and if the present capitalist encirclement is replaced by a socialist encirclement, a 'peaceful' path of development is quite possible in certain capitalist countries, whose capitalists, in view of the 'unfavorable' international situation, will consider it expedient 'voluntarily' to make substantial concessions to the proletariat. But this supposition applies only to a remote and possible future. With regard to the immediate future, there is no ground whatsoever for this supposition.

Therefore, Lenin is right in saying:

The proletarian revolution is impossible without the forcible destruction of the bourgeois state machine and the substitution for it of a new one * * *(Selected Works Vol. VII, p. 124) [*id.*, p. 56].

Problems of Leninism, Gov't. Ex. 21:

Can such a radical transformation of the old bourgeois system of society be achieved without a violent revolution, without the dictatorship of the proletariat?

Obviously not. To think that such a revolution can be carried out peacefully within the framework of bourgeoise democracy, which is adapted to the domination of the bourgeoise, means one of two things. It means either madness, and the loss of normal human understanding, or else an open and gross repudiation of the proletarian revolution [pp. 19–20].

* * * * *

The scientific concept, dictatorship, means nothing more nor less than power which directly rests on violence, which is not limited by any laws or restricted by any absolute rules * * * Dictatorship means—note this once and for all Mssr. Cadets—unlimited power, resting on violence and not on law. During civil war, victorious power can only be dictatorship. (Collected Works Vol. XXV, pp. 441 and 436, Russian Edition)

But, of course, the dictatorship of the proletariat does not merely mean violence, although there is no dictatorship without violence [*id.*, p. 25].

State and Revolution, Gov't. Ex. 23, p. 20:

The replacement of the bourgeoise by the proletarian state is impossible without a violent revolution. The abolition of the proletarian state, i. e. of all states, is only possible through 'withering away' [p. 20].

* * * * *

Have these gentlemen ever seen a revolution? Revolution is undoubtedly the most authoritative thing possible. It is an act in which one section of the population imposes its will on the other by means of rifle, bayonets, i. e., by highly authoritative means and the victorious party is inevitably forced to maintain its supremacy by that fear which its arms inspire in the reactionaries [*id.*, p. 53].

History of the Communist Party of the Soviet Union, Gov't. Ex. 22, p. 355:

The history of the Party further teaches us that a party of the working class cannot perform the role of leader of its class, cannot perform its role as organizer and leader of the proletarian revolution unless it has mastered the advanced theory of the working class movement, the Marxist-Leninist theory.

The passages which have been quoted above by no means exhaust the documentation of the revolutionary

tenets of Marxism-Leninism which appear in the record of this case.

The Communist Party, according to the evidence, has as its final aim the destruction of the existing social order known in this historical period as "Imperialism." The United States is described by the Party as the leading imperialist country of the world, and the Party has as its objective the destruction of the Government of the United States through the proletarian revolution and the institution in its place of the dictatorship of the proletariat (R. 210–211).

Lautner testified that while attending the National Training School in 1941 he was given instructions concerning the strategy and tactics of the Party. He was taught that it is the position of the Party that strategy is the direction of the main blow during the present period, described as the era of "Imperialism." The era of imperialism covers the whole period of time beginning approximately at the turn of the century and continuing through the indictment period. The strategy of the Party during this entire period is to muster those forces in society that will bring about the fundamental change in the social order. Tactics on the other hand are methods of struggle and are subordinate to strategy. The Communist Party has changed its tactics on a number of occasions during its history. For example, in the period prior to 1935, the Party had a tactical line known as the United Front from below. In 1935 it changed to the United Front from above. From 1937 until June 1941, the tactic was identified as the Struggle Against Imperialist War. In June 1941, the tactic changed to one of an all-out United Front against the Fascists. After World War II the tactics changed again. Tactics in the Party will always change, but they are subordinate to the main strategy which does not

change. While the tactics change from time to time, the strategy is always directed toward the forcible overthrow and destruction of the present "Imperialist" Government and of its replacement by the "dictatorship of the proletariat" (R. 296-299)."

As previously pointed out (*supra*, p. 50), in accordance with the policy established at the time of the reconstitution of the Party in 1945, an educational program implementing the decision to return to the basic teachings of Marxism-Leninism, was put into effect nationally as well as in the State of Illinois. During 1946, 1947, and 1948, Lautner taught classes in the Party schools in New York City (R. 162). Among the courses he taught were "Marxism-Leninism," "Political Economy," "Party Organization," "Party Structure," and "Party Discipline." The texts used in connection with his courses were in the main the same as those used by the instructors at the 1941 National Training School and included the pamphlets in the Little Lenin Library series, such as *Foundations of Leninism* (Gov't. Ex. 19) and *Problems of Leninism* (Gov't. Ex. 21), as well as *History of the C. P. S. U.* (Gov't. Ex. 22). He also used the *Program of the Communist International* and *On The*

---

[19] One of the courses taught by the petitioner at the full-time Party School at Lake Ivanhoe, Wisconsin, in July, 1947, was "Strategy and Tactics." Among the books assigned for study by the students were *Foundations of Leninism* (Gov't. Ex. 19) and *History of the C. P. S. U.* (Gov't. Ex. 22). Specifically assigned was Chap. VII in *Foundations of Leninism* entitled "Strategy and Tactics." In explaining the role of tactics in relation to overall strategy, Stalin in that book states at page 104:

"The revolutionary will accept a reform in order to use it as an aid in combining legal work with illegal work, to intensify, under its cover, the illegal work for the revolutionary preparation of the masses for the overthrow of the bourgeoisie."

Struggle Against Revisionism (Gov't. Ex. 48; R. 163) in the courses he taught.

During this period, the witness Cummings,[20] who was a Party functionary in the Cleveland, Ohio, area, attended the Midwest National Training School of the Party which was held at Chicago, Illinois, in December 1945 (R. 435, 436). This school lasted seven days and was one of a number of National Training Schools set up throughout the country. The program of the school was based on such basic Marxist-Leninist classics, as the *Communist Manifesto, State and Revolution, Foundations of Leninism,* and *Problems of Leninism.*

The evidence demonstrates not only that there were formal schools at which the principles of Marxism-Leninism were taught (R. 41, 42, 337–338, 346–347, 450, 453, 454) but that educational discussions based on Marxist-Leninist classics were made an integral part of the activities of the Party clubs in Illinois. The Party members were required to study the "classics." In order to follow the day-to-day tactical line of the Party it was necessary that they subscribe to the *Daily Worker,* the official newspaper of the Party (R. 41–43, 336–338). They were also required to purchase and study *Political Affairs,* "a magazine dedicated to the theory and practice of Marxism-Leninism" (Gov't. Ex. 93) which was published monthly.

In accordance with the policy of the reconstituted Party, a full time Party school was held in July 1947 at Lake Ivanhoe, Wisconsin (R. 454; Gov't. Ex. 54). The petitioner himself was one of the instructors at

---

[20] Cummings was a member of the Party from 1943 to 1949. He joined the Party at the request of the FBI and appeared as a witness in the *Dennis* case.

this school which extended over a period of seven days. The courses of instruction covered such subjects as "The Method of Marxism," "Introduction to Political Economy," "The Communist And The Trade Unions," "The Role of American Imperialism," "The Threat of Fascism," "The Danger of War," "The National and Negro Question," "Strategy and Tactics" and "The History and Role of the Party," the latter two courses being conducted by the petitioner (R. 457–458; Gov't. Ex. 54). A study of the schedule of classes of the school and an outline entitled "Democratic Centralism" shows that the subject matter of the classes was based entirely on a Marxist-Leninist interpretation (Gov't. Exs. 54, 55).

At the school, emphasis was placed on the principle of Democratic Centralism (Gov't. Exs. 54, 55) which "is the basic structure of the Communist Party of the United States." Democratic Centralism is defined in terms of "what it results in and aims toward." It "must be a real synthesis, a fusion of centralism and proletarian democracy. This fusion can be achieved only on the basis of continuous common action, continuous common struggle of the entire Party organization as a whole. Centralization in a Communist Party means not formal mechanical centralization, but centralization of Communist Action, i. e., the formation of a leadership that is strong, endowed with striking power and flexible (Thesis of Third Congress of Communist International, 1921)." (Gov't. Ex. 55).[21] It was at this school that the peti-

[21] See also in Gov't. Ex. 55 at p. 5. *Centralism and Discipline*, p. 5:

"How important is centralism and discipline to a communist party? We will leave the answer of this question to Comrade Lenin who outlined the main form of the Bolshevik Party which succeeded in overthrowing capitalism, maintaining itself against

tioner, in his capacity as a high Party functionary and official Party teacher, instructed in the lessons to be learned from the Russian Revolution (R. 459–460); taught the important role played by strikes in helping to foment revolution (R. 460); explained the difference between the American Revolution and a proletarian revolution modelled on the Russian Revolution (R. 460–461); stressed the importance of Party discipline which required that members be prepared to make every sacrifice, even to giving up their lives to insure the success of the movement (R. 461); and informed his students that, although the Party said it approached the problem of acquiring power with the thought of avoiding bloodshed, the capitalists who control our country would not relinquish power without bloodshed so that the Party is prepared to and intends to spill blood necessary to achieve its objectives (R. 461–462).

The record contains further evidence of the Party's continued adherence to the revolutionary tenets of Marxism-Leninism. In September 1947, John Gates, a member of the National Committee of the Party

---

a hostile and attacking capitalist world and is now engaged in the building of Socialism. He said that:

'The strictest centralization and discipline are required in the political party of the proletariat * * * in order that the organizational role of the proletariat (and this is its principal role) may be fulfilled correctly, successfully, victoriously * * *. Whoever in the least weakens the iron discipline of the Party of the proletariat * * * actually aids the bourgeoisie against the proletariat.' (Left Wing Communism, Ch. V; also to be found in Selected Works, Vol. X at page 84)."

And see *id.*, p. 6:

"In practice exactly what does centralism consist of? Expressed simply, it consists of submission by the minority to the majority; and leading Party work from a center with lower committees and bodies subordinated to higher conventions and committees."

and Editor of the *Daily Worker*, spoke at a Party meeting held in honor of the 100th Anniversary of Marxism. He traced the history of the Communist movement from the time of Marx and Engels to the present, pointing out that Communism is a science. He stated that hard work and not prayer is necessary for the Party to reach its objectives and referred to the fact that Lenin wrote that it would take many years of hard work to establish proletarian governments in the world. Gil Green, Chairman of the Communist Party of Illinois and later a member of the National Committee of the Party (Gov't. Ex. 93), remarked at the same meeting that he hoped to celebrate the next anniversaries of Marxism in the Soviet Republic of the United States (R. 350–352). Again, in November 1947, Gil Green in speaking at a State Convention of the Communist Party of Illinois emphasized the necessity of educating the Party members in the principles of Marxism-Leninism (R. 354).

In November 1950, the petitioner himself was the principal speaker at a meeting held to celebrate the 33d anniversary of the Russian Revolution (R. 362–363). Again, in June 1951, the petitioner spoke at a Party meeting. Referring to the Bible story in which David slew Goliath, petitioner remarked that "our sling shots are not as big as the weapons our enemies are using, but we will win at the end in spite of it." At the conclusion of the meeting, all present arose and sang the "Internationale" (R. 371–372).

Documentary evidence of the Party's continued adherence to the principles of Marxism-Leninism is to be found in the publication *Political Affairs* for February 1951 (Gov't. Ex. 93) and the various editions of *Party Forum*, the official organ of the Communist Party of Illinois (Gov't. Exs. 57, 58, 59, 60, 64, 66).

Similarly, the Constitution of the Communist Party, Article IV, Section 10, directs that "All members shall strive to acquire an understanding of the fundamentals of Marxism" (Gov't. Ex. 45). And in *A History of the Communist Party of the United States* (Defense Ex. 3) William Z. Foster, at page 521, directs that "Above all, the Party must strengthen its grasp of Marxism-Leninism."

MOTION FILED SEP 7 1956

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~32~~ 4

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AND BRIEF *AMICI CURIAE.*

BRUCE MCM. WRIGHT,
THOMAS G. WEAVER,
LIVINGSTON L. WINGATE,
CHARLES T. MCKINNEY,
LOUIS S. MARITZER,
Attorneys for Amici Curiae,
160 Broadway,
New York 7, N. Y.

INDEX.

	PAGE
MOTION FOR LEAVE TO FILE BRIEF *amici curiae*	
PRELIMINARY STATEMENT	1
THE STATUTE INVOLVED	10
The Argument:	
I. The Negro's Justification In Selecting Alternatives In Politics Finds Much Historical Precedent And Justification	11
(a) The Negro's Political Frustration (1863-1956)	13
II. The Membership Clause Of The Smith Act Is Unconstitutional On Its Face And As Applied Is Violative Of The First Amendment To The Constitution	21
CONCLUSION	25
APPENDIX A	26
APPENDIX B	28
APPENDIX C	30
APPENDIX D	31
APPENDIX E	32

Index of Cases.

	PAGE
Bridges v. *California*, 314 U. S. 252	22
Brown, et al. v. *Board of Education*, 347 U. S. 483	4, 30
Dennis v. *United States*, 341 U. S. 495	23, 24
Plessy v. *Ferguson*, 163 U. S. 537	3, 9
Schenck v. *United States*, 249 U. S. 47	22
Schneiderman v. *U. S. A.*, 320 U. S. 118	12, 21, 23, 24
United States v. *Lattimore*, 112 Fed. Supp. 507	12
United States v. *Schwimmer*, 279 U. S. 644	24
Wieman v. *Updegraff*, 344 U. S. 183	12, 18

Statute.

United States Constitution:

Fifteenth Amendment	17, 22
First Amendment	23, 24, 25
Fourteenth Amendment	9, 13, 17, 22
Thirteenth Amendment	9, 22

Index of Texts and Comments.

Booker T. Washington And The Negro's Place In American Life, by Samuel R. Spencer, Jr., pp. 171-172	20
Frederick Douglass, letter dated October 6, 1887	15
Frederick Douglass, article in The Afro-American Budget, Vol. I, No. 2, p. 29	19
J. Mercer Langston, from a speech delivered at Saratoga, New York, on August 2, 1872	19
New Republic, Nov. 16, 1953 (Speech of Mr. Justice William O. Douglas before American Law Institute)	18

PAGE

Republican Greeting To 25,000 Free and Loyal Colored Voters Of The State of New York (1887-1888) 14

The Changed Political Thought Of The Negro, by Elbert Lee Tatum, p. 184 17

The Freedom Reader, by Edwin S. Newman, p. 205 13

The Negro In American National Politics, by William F. Nowlin, p. 125 17

The Negro In Politics, by T. Thomas Fortune, pp. 11, 28 16

The New York Times, March 22, 1956 20

The Political Plight Of The Negro, by Kelly Miller, Vol. I, No. 2, p. 3 19

The Strange Career of Jim Crow, by C. Vann Woodward, p. 60 14

The Washington Tribune (D. C.), May 30, 1930, editorial page 17

To Secure These Rights (Report of President's Committee On Civil Rights) p. 81 8, 9

Young Jim Crow, by C. Vann Woodward (The Nation, June 7, 1956) 14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 32.

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

THE UNITED STATES OF AMERICA,

Respondent.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

TO THE HONORABLE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The undersigned, as counsel for the citizens whose names are hereto attached (Appendix A), respectfully move this Honorable Court for permission to file the accompanying brief, *amici curiae*. The attorney for the petitioner has consented to the filing of this brief.

Permission for leave to file has been requested from the Solicitor General of the United States. A copy of this request is hereto attached (Appendix B). The Solicitor General has not acceded to this request, on the ground that "the issue is a general one which has nothing to do with race or color."

We conceive the issues upon this appeal to bear vitally upon the Negro's search for that equalitarian dignity which

is whole citizenship. We are, for the most part, American Negroes who have no affection for the petitioner's politics; but we are concerned with his entitlement, as a Negro, to select any political party he wishes for his affiliation, as a matter of alternative freedom. It is the Negro's political alternatives in the light of his peculiar history with which this brief is primarily concerned. Both in emphasis and frame of reference, this is quite different from any position taken by the petitioner himself. Although it is true that the legal issue is theoretically general and untouched by race, as such, it is nevertheless true that Mr. Lightfoot, a Negro, is the first person ever convicted under the membership clause of the Smith Act. As such, he may be, though wrongly, thought to be a symbol of a new frustration of Negro efforts for civil equalities. Although the appeal of a white petitioner, Junius Irving Scales, will be heard as a companion case, the *amici* note that Scales was closely identified with the Negro's cause. The strong feelings of American Negroes, then, are not to be dismissed as a tenderness of sensitivity.

As is shown by the differing addresses of the proposed *amici* throughout the country, there is widespread interest and concern among Negroes in the Lightfoot appeal. Their necessity for dissent from antiquated restrictions and static concepts of the Negro's place and progress is embodied in this appeal and gives them a direct and genuine interest in the outcome of this case.

In a time when much political dissent is frowned upon and when restraints have tended to spill over into the freedoms which are both the tradition and basis of peculiarly American liberties, the Negro's concern is natural. Within Constitutional definitions, the Negro's dissent must remain constant until the democracy which allows his plaints is as color-blind as Mr. Justice Harlan declared

it to be in his *Plessy* v. *Ferguson* dissenting opinion (347 U. S. 483). We believe that our citations from the history which has touched us and which we, as Negroes, have affected, is a persuasive demonstration that American Negroes must have political alternatives or, perhaps, abandon all politics as an expression of dissent.

Our views are presented as non-Communists and as Negroes who are, principally, Democrats and Republicans.

A summary of the points to be made is contained in the index of the brief which is annexed hereto and made a part of this motion.

WHEREFORE, it is respectfully requested that this Honorable Court grant this motion to file the annexed brief as *amici curiae*.

BRUCE MCM. WRIGHT,
THOMAS G. WEAVER,
LIVINGSTON L. WINGATE,
CHARLES T. MCKINNEY,
LOUIS S. MARITZER,
Attorneys for *Amici Curiae*,
160 Broadway,
New York 38, New York.

Supreme Court of the United States

OCTOBER TERM, 1950.

CLAUDE MACK LIGHTFOOT,

Petitioner,

v.

UNITED STATES OF AMERICA.

PROPOSED BRIEF *AMICI CURIAE.*

Preliminary Statement.

This *Amicus Curiae* brief is submitted in the appeal of Claude Mack Lightfoot by American Negroes who are deeply concerned that justice should be untarnished by any prejudice and that the constitutional rights and civil liberties of all Americans should be held inviolate. The tragedy of the conviction of Claude Lightfoot as we see it lies in the restriction it imposes on the right of American citizens to avail themselves of political alternatives—the right of an American to select without fear of legal entanglements the political party with which he may desire to associate.

We *amici* believe that in the conviction of Mr. Lightfoot for membership in the Communist Party of the United States we are presented with a danger of immeasurable proportions to our basic constitutional freedoms of association, of assembly, and as well, of speech. In saying this we do not regard ourselves as protagonists of the philosophy of Communism, for that is not our intention.

We who are Negroes have been since first we reached these shores compelled by the realities of our position to seek political alternatives. We feel therefore that the

right of American citizens to invoke political alternatives must be held sacred and inviolate. For Negroes the right of way to a choice of political channels through which we sincerely believe we can arrive at the goals of freedom, a democracy embracing all with equal justice under law is holy ground. Each individual must not only have the opportunity to pursue happiness, but also to attain it.

In search of political alternatives the heroic Crispus Attucks and other Negroes, slave as well as freemen, found unity with the forces of George Washington and Thomas Jefferson, as opposed to the Tories; Negroes were the allies of the Abolitionists rather than the slave holders.

The right of freedom of choice has only been ours since Abraham Lincoln signed the Emancipation Proclamation and the Civil War (Thirteenth, Fourteenth and Fifteenth) Amendments to the federal Constitution were enacted.

We believe that the Lightfoot conviction proscribes that hard won freedom of political choice and this presents roadblocks to full citizenship along constitutional avenues. This point loses none of its vitality because other political parties than the Communist exist as alternatives. We believe that in meeting the challenge to any ism which may be conceived of as a threat to our way of life, the expansion rather than the restriction of constitutional liberties, civil rights and the deepening of respect for human dignity offers the greatest guarantee for tranquil domestic development. This is especially true if there exists any danger that the administration of law will be tainted by the injection of prejudice of creed or color. The cause of Negro Americans is a relentless pursuit of our country's constitutional ideals. Freedom, equality of opportunity for full participation in every phase of life in our country has for Negroes always necessitated the availability of alternatives. The very nature and framework of our political

system determines the need for the continued maintenance of conditions that permit freedom of choice to all seeking the objectives set forth in the Preamble of the Constitution.

The existence of those conditions which now makes attainable the magnificent promise of freedom upon which our government rests, the integrity and high prestige of this Court demand that we submit this brief as friends of the Court lest we be derelict in the performance of our duty as citizens.

Basic to, and inherent in the existence of alternatives is freedom of choice, and central to freedom of choice is the right to associate with those who support and/or have created that choice. The tragedy of the Lightfoot conviction is its intimidation, both of the Negro people and the democracy his freedom must inevitably advance. To limit freedom of choice in the selection of political alternatives is in this instance to do violence to our traditions and to vex the rights which must make our democracy the conscience of liberty.

We live in a world in which the dignity of the human being, his fundamental rights and the spiritual values of mankind are seriously threatened from many sides. Some of these despoilers are Americans who in their relations with the Negro people constantly outrage the best traditions of liberty and American democracy. We unqualifiedly believe that our country must safeguard and advance the noblest ideals of American history against all enemies within or without; that it must become the stronghold of man's freedom and the champion of his dignity.

We see in the ceaseless struggles of American Negroes for a realization of all that the American heritage of participation in all the processes of democracy and the freedom implies the endless dream of black folk for full development of our industrial and cultural life. This we

believe is good for our country's growth and its prestige before the world. There is a thread of historical continuity running through the Negro's struggles of yesterday and today, as diverse as they have been, that makes them all an aid to the enlarging patterns of freedom. Now is the time for America to realize the fondest hopes and aspirations of all of its people. The whole world moves forward toward greater freedom and our country is a part of and not apart from that world.

Therefore, every vestige of the cult of white supremacy, whether expressed in "separate but equal" decisions which imply our inherent inferiority and violate constitutional liberties, or otherwise, must be democratically but nonetheless determinedly brought to an end. This is a judicial, a legislative and administrative responsibility of government that cannot be evaded.

Almost every branch of the American church has in the present period shown remarkable initiative in calling for moral regeneration in the realm of race relations. The President's support for civil rights, the favorable position of various political leaders of all political persuasion and most pronounced of all the historic stand taken by this Court in its magnificent May, 1954 desegregation decisions (*Brown* v. *Board of Education*, 347 U. S. 483), these events are signs-of-the-times. They open up a vista, a new horizon for civil liberties, civil rights and human dignity that eclipses by far the frenzied efforts of those who would hold back the clock of advancing humanity. Yet we realize that the pressure of those who form the cult of the white supremacist or through their silence support it is great indeed. It is, however, with our faces turned toward this dawning new day for American democracy that we attach our names to this document and make of it another testimonial to the will of the Negro people to attain the goals

of dignity and freedom their heroic forefathers set for themselves and their posterity.

This is essentially a Negro community brief, signed in a spirit of non-partisan cooperation by men and women of differing political views and social and religious backgrounds.

The conviction of a Negro for having chosen the political alternative of a Communist promise, when life as it unfolds for him brings him rightly or wrongly to the conclusion that all others have failed, clothes the choice itself with criminal intent[1] in the place and stead of the time-honored presumption of innocence. By this proscription the Negro's alternatives are reduced to the direction of others, and the directors are those whose political failings induced his lack of faith. His allies in cause are reduced to penury and woe as well.

The jury was instructed at the close of the Lightfoot trial that he could not be found guilty simply because he was a Communist or an officer of that party. Guilt under the statute could be found, if at all, in Lightfoot's knowledge that he was a member of an organization of persons assembled "to teach and advocate the overthrow and destruction of the United States by force and violence, as speedily as circumstances would permit."

Lightfoot's conviction rests upon that hostility to ordered affairs which is said to be guilty knowledge. The facts are that Lightfoot is not accused of a single act of violence nor is he charged with disturbing the peace or threatening the foundations of government. The vitals of that shapeless quality, that intangible *guilty knowledge* is a process of thought which at some unascertained point

[1] As we shall show *infra*, a Negro may join the Communist or any political party for a variety of reasons, all of which may be completely unrelated to "the overthrow or destruction of (the) . . . government in the United States by force and violence . . ."

in the mind is calculated to have tainted Mr. Lightfoot's brain with an understanding that the Communist Party was a cabal of those who were bent on the forcible and violent destruction of our government "as speedily as circumstances would permit."

What the favorable circumstances would be in which the overthrow might take place are not defined by the statute; nor is there any evidence in the record describing such circumstances. Must the defendant have a hand in creating the circumstances? The record is barren of any proof that the defendant did anything towards that end. Or, does the Government contend that the circumstances permitting the overthrow of the Government would be created by someone other than the defendant, or by something beyond his control? No one knows.

A statute so vague in its meaning is invalid; an indictment based on such a statute is insufficient in law and cannot support a conviction. The unashamed purpose of the statute in question is to place the brand of criminality upon ideas with which the legislators disagree and to prevent political action in furtherance of such ideas. The Congress has no power to enact such laws. Tampering with the free flow of ideas and preventing their acceptance by the people is not a proper Congressional function. Having passed such a measure, this Court should declare it null and void.

This then is an indictment and conviction for a supposed act *in futuro* with punishment provided *in presenti*.

The jury's task was to speculate on thought processes in an area removed from any theory of "clear and present danger." A fundamental answer to the speculative membership clause of the Smith Act would seem to be found in Article 1 Section 9 of the Constitution which bans the bill of attainder and the *ex post facto* law.

If laws which are retroactive in penalty are unconstitutional, how much more perilous to the Constitution is a law which convicts today on the supposition that a crime may be committed at some indeterminate tomorrow. More than that it must be said of the Communist Party regardless of one's abhorrence of it that its announced program extended far beyond the allegation that it stands for the forcible overthrow of government at some indefinite historical moment. We must in self-protection and in order to maintain our own right to seek alternatives hold that in the ordeal of Claude Lightfoot we have witnessed ideas at the stake and a trial of liberty itself in the dread cause of limiting thought.

One need hold no brief for the Communist Party to speak for Claude Lightfoot's right of choice, a choice consistent with his estimate of the political situation. Claude Lightfoot, as a Negro, may have become a Communist for many reasons none of them associated with force and violence but rather conditioned by his desire to combat the force and violence he had himself encountered and which he saw almost daily employed against his people. The vexing danger inherent in the inferences drawn to support his conviction can only be deeply disturbing to many Negro Americans.

The history of Lightfoot as reviewed by the brief of his counsel reveals a central preoccupation with the dream of full and complete citizenship for Negroes. Unless we are to create presumptions of guilt flowing from the teachings of certain books and the advancement of unpopular political theories; unless we are to say to Negro Americans that they must find their solace and salvation solely in the promises of the major political parties of our country, the conviction of Lightfoot must be reversed. If we do not reverse this conviction, then those who deprive Negroes

of their constitutional liberties and civil rights may also arbitrarily dictate to their victims the political organizations in which they may function. That is already occurring in the case of the National Association for the Advancement of Colored People which is being outlawed in certain states because of its persistent defense of the constitutional rights of Negroes.

We are not mind readers. But we cannot accept from the mouths of paid informers or the lips of faceless men the reasons that motivate men seeking an alternative.

Claude Lightfoot could very well have been moved toward the Party he selected by virtue of the existence of such conditions as those of which President Harry S. Truman's Committee on Civil Rights, headed by Charles E. Wilson, then President of General Electric, wrote about in that amazing document entitled, *To Secure These Rights* (Simon and Schuster, New York 1947).

There we find recorded by men whose political integrity has never been in question these facts:

On the administration of justice:

> "The different standards of justice which we have allowed to exist in our country have had further repercussions. In certain states, the white population can threaten and do violence to the minority member with little or no fear of legal reprisal."

On "The Right to Vote":

> "The denial of the suffrage on account of race is the most serious present interference with the right to vote."

On job discrimination:

> The final report of FEPC states that "the wartime gains of Negroes * * * are being lost through an unchecked revival of discriminatory practices."

On discrimination in private schools:

> "Certainly the public cannot long tolerate practices by private educational institutions which are in serious conflict with patterns of democratic life sanctioned by the overwhelming majority of the people. By closing of the door through bigotry and prejudice to equality of educational opportunity, the public is denied the manifold social and economic benefits that the talented individual might otherwise contribute to our society."

On segregation:

> "• • • it brands the Negro with the mark of inferiority and asserts that he is not fit to associate with white people."

Or perhaps Mr. Lightfoot was deeply affected by that quotation taken by the President's Civil Rights Committee from the famous dissent of Justice Harlan of Kentucky in the case of *Plessy* v. *Ferguson* (163 U. S. 537). It was there that Justice Harlan "denounced his colleagues for the manner in which they interpreted away the substance of the Thirteenth and Fourteenth Amendments."[2] In this magnificent dissent with which this present Court in its May 17th, 1954 desegregation came to agreement, Justice Harlan said:

> "Our Constitution is color blind, and neither knows nor tolerates classes among citizens • • •
>
> "We boast of the freedom enjoyed by our people above all other peoples. But it is difficult to reconcile that boast with a state of law which, practically, puts the brand of servitude and degradation upon a large class of our fellow citizens, our equals before the law. The thin disguise of 'equal' accommodations • • • will not mislead anyone, or atone for the wrong this day done."

---

[2] *To Secure These Rights*, The Report of the President's Committee on Civil Rights, p. 81.

Then the Committee added:

> "If evidence beyond that of dispassionate reason was needed to justify Justice Harlan's statement, history has provided it. Segregation has become the cornerstone of the elaborate structure of discrimination against some American citizens."

The "state of law" which practically, as Justice Harlan said, "puts the brand of servitude and degradation upon a large class of our fellow citizens" is changing. But Mr. Lightfoot might well have desired a balance consistent with our government of three equal parts, a balance which would see the Legislative and Executive branches of government keeping step with the changing law.

We are moving now toward the alleviation of these evil conditions. But the psychological effect upon a Negro of years of broken promises must be advanced in support of one who seeks a political alternative which is his constitutional right although his choice runs contrary to what in our thinking may be proper.

Because of these deep beliefs and the concern for the future of our country to which they give birth, we seek consent as friends of this Supreme Court to intervene as members of the Negro community of the United States. We *amici* believe that the conviction of Claude Lightfoot impairs the alternatives which of right we may claim. Freedom of association and assembly should not be stifled nor should one judge lightly as to why an alternative is invoked. If such freedoms perish, the Republic itself must topple from within.

The Statute Involved.

The indictment to which Claude Lightfoot entered a plea of not guilty, is based upon an Act of Congress found

in Section 2385 and Title 18 of the United States Code. It says, in pertinent part, as follows:

> "• • • Whoever organizes or helps or attempts to organize any society, group or assembly of persons who teach, advocate or encourage the overthrow or destruction of any such Government by force or violence, or becomes or is a member of, or affiliates with any such society, group, or assembly of persons, knowing the purpose thereof" [shall be punished].

The quoted language is from the statute commonly known as the Smith Act.

ARGUMENT.

I.

The Negro's justification in selecting alternatives in politics finds much historical precedent and justification. In joining the Communist Party, petitioner, in any event, manifested the right to make a choice among competing political philosophies which is secured to him by the First Amendment of the Federal Constitution and which no statute or decision can make illegal, criminal or punishable.

The defendant conceded at the trial his membership in the Communist Party and that he was one of its officers. Prosecuting counsel then offered in evidence recitals of teaching posts held by Lightfoot and the texts of the courses taught. From this the jury was permitted to infer, and the Court of Appeals has confirmed, that Lightfoot's engagement in dangerous talk and teaching, his associa-

tion with other Communists, spelled out that quantum of sufficient guilty knowledge which breaches the Smith Act.

Let us put aside the question of a sovereign's right to prosecute ideas and to define what is pure and what is contaminated knowledge. It has been said, for example, in *Schneiderman* v. *United States*, 320 U. S. 118, 136, that:

> "• • • men in adhering to a political party or organization do not subscribe unqualifiedly to all its platforms or asserted principles."

This was said in the case of a white Communist leader. We ask, should it be less true of a Negro Communist, through inferences or otherwise? No speculation should be tolerated to separate Lightfoot's Negro allegiance to the principles of a party which declares for unqualified equality from some ominous concept which is vaguely defined as "guilty knowledge."

> "Sympathies and beliefs and what they mean to different individuals involve concepts that are highly nebulous and speculative at best. I presume a person could sympathize with a belief and yet still not believe. To probe the mind in a situation like this would give rise to nothing more than sheer speculation on the part of the prober." (*United States* v. *Lattimore*, 112 Fed. Supp. 507, 516.)

These are universal admonitions and they have a special application to the Negro citizen and his justification for political dissent. Having had his political faith abused by orthodoxy, his dissent is not only warranted, it is necessary to dignified existence. The liberties embedded in the Constitution for all, are both a sufficient reason and a sufficient protection for any unorthodoxy of speech and association. (*Cf. Wieman* v. *Updegraff*, 344 U. S. 183, 193 —concurring opinion of Mr. Justice Black.)

(a) The Negro's Political Frustration (1863-1956)

In 1955, Thurgood Marshall, Special Counsel to the National Association for the Advancement of Colored People observed that:

> "Although almost a century has elapsed since the Civil War and the abolition of slavery as an American institution, the transition of the Negro from a slave-chattel to a full fledged free American citizen has been painfully retarded."[3]

The fact is that things are as Justice Harlan almost prophetically said they would be.

The compulsion which led to Thurgood Marshall's statement is a matter compounded of elements of slavery, abolition, Civil War, Reconstruction and all of the political years since. The Negro's political allegiance, in the main, has wandered from one to the other of the two major parties and to a lesser degree to other parties which have appeared upon the political horizon. Yet constitutional fulfillment faces generations of pro and con legalisms and disputes over the very amendments to the Constitution which were long ago thought to have guaranteed the very rights sought in the continuing contest for equality. Now men question whether the Fourteenth Amendment was ever ratified. (*United States News And World Report*, July 16, 1956).

We do not here seek to promote the prestige of any political party. We cannot conceive these as issues here.

Because the right of alternatives is at stake we do find it necessary in its defense to recount some events in the history of our country and of the Negro's ceaseless efforts to improve his status.

The struggle for equality of opportunity was joined many years ago. In 1887, William H. Johnson, a Negro of

---

[3] Edwin S. Newman, *The Freedom Reader* (1955), p. 205.

Albany, New York, was elected a member of the Republican State Committee. He said at that time, that Negroes:

> "* * * are today (1887) against the National Democratic Party, handicapped as it is by the Bourbon South, the old Pro-Slavery South and not the new. We are to a man with the Grand Old Republican Party of today, because that stands as firmly for equal rights for all today as it did for the abolition of slavery in 1860."[4]

Indeed, the Republican Party had been organized for the express purpose of limiting the expansion of the slave power. The meaning of slavery and the moral imperatives of the abolitionists had a tremendous impact upon the political thinking of the times. The contending parties of that era were the Whigs and the Democrats. The Republicans were just beginning to emerge. Later, the Populists were to come, the Free Soil Party, the Progressives and the Bull Moosers.

The Whigs were identified as the party of privilege and as conservatives. It was when the conservatives gave "verbal assent" to the reform programs urged by the so-called Farmers' Alliance, and then failed to keep their promise, that "the farmers hastily organized a third party, the Populists, and went into all-out revolt against the conservatives."[5] Thus, we find early precedent for the search for other alternatives.

C. Vann Woodward, professor of American history at Johns Hopkins University, had this to say in an article entitled "Young Jim Crow" which appeared in the *Nation*, June 7, 1956:

---

[4] Republican Greeting to 25,000 Free and Loyal Colored Voters of The State of New York, 1887-88 (Schomburg Collection, N. Y. City Public Library.)

[5] C. Vann Woodward, *The Strange Career of Jim Crow* (1955), p. 60.

> "After Reconstruction was overthrown, the South retained such segregation practices as had already been established, but showed no immediate disposition to expand the code into other fields. Nearly a generation was to pass before segregation became the harsh, rigid and universal system that emerged in the twentieth century."

One of the giants of the early Negro struggle for citizenship and the full realization of that status as an American, was Frederick Douglass. In a letter dated October 6, 1887, he wrote of the Democratic Party as follows:[6]

> "But that party is altogether too slow of foot, too heavily burdened with its ugly record and the Solid South to be safely trusted to lead in the cause of liberty, enlightenment and progress."

Thus we see that so soon after slavery as 1887, the lines of debate were being drawn and whatever hopes the Negro may have been induced to place in the Democratic Party were already subject to disillusionment. We cite this event only to trace the course of history.

In the light of what many view as abandonment of the Negro by the major political parties through the Hayes-Tilden Compromise, it is little wonder that so many Negroes have always looked for alternatives to accomplish their objective. Neither should there be over-much of wonder that, in the sometime competition for his vote, the Negro tends to analyze and compare, before he affiliates.

Basic to the problem at hand, is whether a Negro should be penalized and tainted as a criminal when he associates with a political party, despite the fact that the powers that be attack it fiercely, that has made an unqualified promise to aid in the Negro's contest for equal status.

---

[6] Schomburg Collection, New York City Public Library.

Writing in 1886, T. Thomas Fortune, a Negro and the then editor of *The New York Freeman*, noted that:

> "The history of the race since 1865 should teach us that there is no more tricky and slimy thing in the catalogue of duplicity and cowardice than the average politician; and yet we • • • hasten to brand as a traitor any man of us who has the intelligence and the courage to protest against the broken promises, the sugar-coated capsules of political mountebanks."

It was a matter of record, he continued that the Negro's voting strength had been "neutralized since 1876 by the very party (Republican) they serve with such blind zeal and devotion."[7]

It took a long time for the Negro to reach the political maturity which tolerates disillusionment with the respectability of membership in the major parties to which emancipation had entitled him. At one point in history, almost nine-tenths of the Negroes then in America, accepted as the "alpha and omega of sentimental politics," the dictum of Frederick Douglass that "the Republican Party is the ship; all else is the ocean."[8] In somewhat cooler criticism of this extravagance, Mr. Fortune wrote in his *The Negro In Politics* (p. 28) that:

> "There is no other race beneath the sun which would be satisfied with the contemptible status we occupy in politics of the country without showing signs of restlessness and discontent."[9]

He concluded his essay with the opinion that, for Negroes, the major parties were "instruments of tyranny" which had ceased to "represent progressive justice."

---

[7] Fortune, op. cit., p. 11.

[8] T. Thomas Fortune, *The Negro in Politics*, p. 28.

[9] T. Thomas Fortune.

In the 1920's, a number of Negroes, dissatisfied with the "indifferent attitude of the Republican Party toward enforcement of the Fourteenth and Fifteenth Amendments to the Constitution, and other grievances have gone over to the Democratic and Socialist parties."[10]

By 1930, the stimulus of the ideal which created the Republican Party, had waned. The trend had begun for the Negro towards a kind of political independence which no longer followed party labels, but "men and issues."[11]

Some Negroes, in search of political alternatives to the two major parties, advocated a coalition with labor as a way out.[12] William F. Nowlin advised that alignments should be made with other groups when profitable.[13]

Within the framework of this historical data must be found the meaning of any Negro's political disaffection and his search for alternatives which may reflect his political maturity although his choice may be distasteful to many of us.

We believe that the Negro citizen like his white brother has—and must be protected in—the constitutional right to: a) support either of the major political parties; b) shift from one party to the other; c) move outside of either of the two major political parties. This, indeed, has been his political history. The intellectual revolution which liberated Negroes from their blind fealty to any political party has made them see the necessity for protest against the orthodoxy which has seen almost a century pass without the guarantees of the Constitution having become more

---

[10] Wm. F. Nowlin, *The Negro in American National Politics* (1931), p. 135.

[11] Elbert Lee Tatum, *The Changed Political Thought of the Negro, 1915-1940* (1951), p. 184.

[12] *The Washington Tribune*, editorial by L. M. Murray, May 30, 1930.

[13] Nowlin, op. cit., p. 143.

than a matter of argument and the urging of nice distinctions.

To penalize a Negro for his political affiliation, is to remove a constitutional ally from the arena where freedom is won and preserved. For, in the conviction of Lightfoot we find a *caveat* to all Negroes who would dissent and a threat to any white citizen who might wish to identify with that dissent.

Is not the conviction of the Negro citizen, whose total biography reveals a search for racial dignity a prohibition against foment and unorthodoxy? But, we are reminded:

> "Our own free society should never forget that laws which stigmatize and penalize thought and speech of the unorthodox have a way of reaching, ensnaring and silencing many more poeple than at first intended. We must have freedom of speech for all or we will in the long run have it for none but the cringing and the craven. And I cannot too often repeat my belief that the right to speak on matters of public concern must be wholly free or eventually be wholly lost." (Concurring opinion of Black, J., in *Wieman* v. *Updegraff*, 314 U. S. 183, 193.)

And we recall the admonition to people of good will expressed by Mr. Justice William O. Douglas when speaking before the American Law Institute. As reported by the New Republic, November 16th, 1953, he observed that America's

> "growing tendency in the interests of security to take short cuts to disregard the rights of the individual, to sponsor the cause of intolerance, and to adopt more and more tactics of world forces we oppose * * * have helped lose for America the commanding position of moral leadership which we had at the end of World War II."

We cannot refrain from the comment that much of this loss was due to the prevalence of racism in our country.

Unorthodoxy is hardly a new concept for Negroes of political awareness. In 1912, "for the first time since his enfranchisement • • • sixty per cent of the effective colored votes went to the Progressives."[14]

Frederick Douglass commented on the inauguration of Grover Cleveland and the alarm and consternation which that event caused in "every black man's cabin" in the South:[15]

> "The Democratic Party had, in its day, done much well calculated to create a dread of its return to power. In the old time it was the ever-faithful ally of the slaveholders and the inflexible defender of slavery. In the New Time, it has been distinguished as the party of the shot-gun, the cat-whip and the Solid South."

It was said, also, that:

> "Andrew Johnson once claimed to be the Moses of the colored people, but no sooner did he get the power, through the assassination of Lincoln, than he forgot the Negro • • •."[16]

When Woodrow Wilson was elevated to the Presidency as a Democrat, many Negroes believed that, at last, the White House was being graced by an intellectual and a political philosopher too learned in the science of democracy to yield to any diminution of the Negro's liberties. Yet:

---

[14] Kelly Miller, *The Political Plight of the Negro*, Vol. 1, No. 2, p. 3 (1913).

[15] *The Afro-American Budget*, Vol. 1, No. 2, June, 1889, "The Future of the Race," p. 39.

[16] J. Mercer Langston, from a speech delivered at Saratoga, N. Y. on August 2, 1872, Manuscript documents, Schomburg Collection, N. Y. C. Public Library.

> "President Wilson's executive order establishing segregated facilities for colored federal employees, together with the flood of discriminatory legislation introduced in the first Democratic Congress, made Negroes suspect that the New Freedom offered them little that was new and little that was freedom. * * * the hopes that Theodore Roosevelt's friendship had raised among Negroes at the beginning of the new century had faded some time before. * * *"[17]

It is typical of any year that the daily press can report that civil rights legislation, for example, fails of passage by the device of the filibuster.

Sectional justice, Executive passivity, as well as the legislative filibuster are among the factors which compel a Negro to search for alternatives outside as well as within the major political parties and to look for aid from those whose view of the Constitution's fabric of freedom is unqualified. Claude Lightfoot might very well believe that there should be more concern for a full extension to Negroes of Constitutional equality and less anxiety about the "South's emotions."[18]

Many regard as almost incredible that the conscience and the morality of the abolitionist movement, begun over a century ago, which resulted ultimately in the theoretical enfranchisement of the Negro, has had so little effect upon the parties controlling the federal government. That some Negroes would look for another party to fit the shape of their dreams can be readily understood.

---

[17] Samuel R. Spencer, Jr., *Booker T. Washington and the Negro's Place in American Life* (1955), pp. 171-172.

[18] "The President repeated the appeal he made a week ago for moderation on the racial issue, and understanding of the South's emotions" (N. Y. Times, 3/22/56).

II.

The membership clause of the Smith Act is unconstitutional on its face and, as applied, is violative of the First Amendment to the Constitution.

The single count indictment and the conviction based thereon both flow from the pernicious and discredited doctrine of "guilt by association." The petitioner's culpability under the Act is said to be found in his membership in the Communist Party, while knowing that "the purposes thereof" were concerned with the violent and forcible overthrow of the United States Government so soon as circumstances might permit. It was this so-called "guilty knowledge" which forms the gravamen of the charge and the structure of the rationale which has upheld the conviction.

Since no overt act of violence is alleged and no hostile conspiracy is suggested, the case appears to have been tried upon a theory that Claude Lightfoot's membership in the Communist Party and his association with other members, supplied whatever guilty knowledge of unascertained future violence was required under the Act. To define such association as a criminal act sufficient for indictment and conviction runs counter to our most ancient concepts of civil law and is clearly at war with the traditional concepts of our criminal jurisprudence.

> "• • • under our traditions beliefs are personal and not a matter of mere association, • • •" (*Schneiderman* v. *U. S.*, 320 U. S. 118, 136).

We believe that guilt, too, is personal and that freedom of speech, conscience, inquiry and assembly, when restricted or punished, is an abuse of the Constitution, in the absence of that "clear and present danger" to our Government

which Mr. Justice Holmes mentioned in *Schenck* v. *United States*, 249 U. S. 47. We do not suggest, in any event, that the "clear and present danger" test serves "to mark the furthermost Constitutional boundaries of protected expression," for we believe that it does "no more than recognize a minimum compulsion of the Bill of Rights." *Bridges* v. *California*, 314 U. S. 252, 263.

Crucial to any analysis of the argument here is the monition to notice that there is neither charge nor evidence of any incitement to riot or violence. Absent from the record, also, is the imputation or evidence that Lightfoot advocated terrorism, sabotage, spying or any of the other tactics so generally associated with sedition and revolution. The inescapable premise of his conviction, then, appears to be buttressed by nothing more than the jury's inferences that he was a political dissenter, espousing unpopular, radical and social doctrines. He has been prosecuted, then, for his ideas, not for his activities. He has been convicted of having read the "wrong" books and having taught from their uncensored texts, of having associated with the "wrong" people and of thinking the "wrong" thoughts.

In the course of the Negro's quest for undiminished citizenship and the rights which keep that prized status inviolate, political activity has played the indispensable role of conscience-prodder to the nation; it has been always important, though sometimes futile. In the tardy pursuit of happiness guaranteed to the Negro by the Thirteenth, Fourteenth and Fifteenth Amendments, the grandeur of the Constitutional dream has been made his in full. To utilize in every way the rights woven into emancipation and citizenship has been the most precise concern of Negroes during the nearly one hundred years since the American conscience rebelled against slavery. Negroes thus have a significant and vital stake in the preservation,

use and enjoyment of every right to protest freely against injustices, to air grievances and to compete in the marketplace of ideas.

We believe, as Mr. Justice Black has said:

> "* * * that the First Amendment is the keystone of our Government, that the freedoms it guarantees provide the best insurance against destruction of all freedom."
>
> *Dennis* v. *United States*, 341 U. S. 494—dissenting opinion.

The First Amendment was intended to protect those persons who, rightly or wrongly, feel aggrieved and wish to express and protest their disagreement and note their dissent. Its letter and spirit protect the soap-box orator, the lobbyist, the pamphleteer and those who have sought Negro dignity by a bus boycott in Montgomery, Alabama. So, also, was its matrix formulated to protect the political activity of Claude Lightfoot. To permit Congress to designate what political parties a citizen may or may not affiliate with in the exercise of his Constitutional rights, is to allow enforcement of political orthodoxy and to hold that the First Amendment protects only those who cleave to orthodoxy. To so hold would frustrate the First Amendment and make a mockery of the rights it defines as within its protection.

> "The Constitutional fathers, fresh from a revolution, did not forge a political straitjacket for generations to come."
>
> *Schneiderman* v. *United States*, 320 U. S. 118, 137.

And, as Mr. Justice Holmes has so well said:

> "* * * if there is any principle of the Constitution that more imperatively calls for attachment than any

other it is the principle of free thought—not free thought for those who agree with us but freedom for the thought that we hate."

United States v. *Schwimmer*, 279 U. S. 644.

Ideas and speech hostile to the Government and its institutions are the very things that the First Amendment was intended to remove from the area of Congressional proscription. Ever zealous and proud to protect our precious democratic heritage, we concur with Mr. Justice Murphy and his reminder in *Schneiderman* v. *United States*, *supra* (320 U. S. 118) that:

> "• • • we should have a jealous regard for the rights of petitioner. We should let our judgment be guided so far as the law permits by the spirit of freedom and tolerance in which our nation was founded, and by a desire to secure the blessings of liberty in thought and action to all • • •." (p. 120).

We think pertinent the following portion of Mr. Justice Black's dissenting opinion in *Dennis* v. *United States* (341 U. S. 494), where he expresses the hope that:

> "• • • in calmer times, when present pressures, passions and fears subside, this or some later court will restore the First Amendment liberties to the high preferred place where they belong in a free society."

The search for dignity by American Negroes must of necessity lean heavily upon the very intendment of the Bill of Rights which was inspiration enough for the abolition of slavery and must be the spring-board to complete equality and that citizenship of the whole which is the bed-rock of democracy itself. It is the tradition of high preferment for our First Amendment liberties which makes our society free; and in turn, free society compels a preservation of those rights or directs its own suicide by the strictures which first limit and then destroy.

As Negro citizens, we dread the suggestion that a Negro who dissents and seeks political definition in unorthodoxy, commits a crime by his association and becomes a felon through the ideation of his dream of undiluted freedom. That dream is no less our own. For, in the peculiar nature of the Negro's deathless concern with matters of liberty and freedom, unless he dissents from diminution, unless he disputes his restrictions and unless his identification with libertarian progress be eternal, he may be thought to concur with those who would both restrict and limit his full participation in American life.

We submit that the case of Claude Lightfoot presents an excellent point for re-affirmation of the rights enshrined in the First Amendment and the restoration of the Amendment to its "high preferred place." A reversal will enlarge, rather than foreshorten, the Negro's constitutional liberties, while confirming the deep roots which civil rights have and must have in the concept of our democracy.

Conclusion.

Section 2385 of Title 18 of The United States Code, as applied and on its face is a bill of attainder and in violation of the First Amendment to the Constitution. The judgment of conviction should be reversed as a matter of law with instructions to the District Court to grant petitioner's motion to dismiss the indictment.

Respectfully submitted,

Bruce McM. Wright
Thomas G. Weaver
Livingston L. Wingate
Charles T. McKinney
Louis S. Maritzer,
Attorneys for *Amici Curiae*

Appendix A

Dr. W. E. B. Du Bois
23 West 26th Street
New York 10, New York

Rev. C. C. Adams, Secretary,
Foreign Mission Board
National Baptist Convention

Dr. George E. J. Banks
200 West 139th Street
New York 30, New York

Benjamin F. Bell, Jr.
179 West Washington
Chicago 2, Illinois

Harrison Brooks
6442 South Parkway
Chicago, Illinois

Peter Brown
3714 South Wabash
Chicago 15, Illinois

H. D. Coke, Vice President,
Protective Industrial Insurance
Company of Alabama
1010 4th Street N.
Birmingham 4, Alabama

George W. Crockett, Jr., Esq.
3320 Cadillac Tower
Detroit 23, Michigan

Hilliard Ellis
5411 South Ellis
Chicago, Illinois

Rev. George H. Fisher
Raleigh Citizens Association
501 South Wilmington Street
Raleigh, North Carolina

William Preston Foreman,
D. D. S.
3918 Cottage Grove
Chicago 15, Illinois

William Harrison,
Associate Editor,
Boston Chronicle
794 Tremont Street
Boston 18, Mass.

Rev. Thomas S. Harten
Brooklyn, New York

Rev. Charles A. Hill,
Hartford Avenue Baptist
Church
Detroit, Michigan

Hon. Jacob E. Holmes,
Justice of the Peace
Bridgeport, Connecticut

Rev. Robert H. Johnson
553 West 58th Street
Philadelphia, Pennsylvania

Seymour C. Jordan
53265 Michigan Avenue
Chicago 15, Illinois

Samuel Logan
4153 Michigan Avenue
Chicago, Illinois

Conrad J. Lynn, Esq.
141 Broadway
New York 6, New York

Hugh E. Macbeth, Esq.
524 South Spring Street
Los Angeles 13, California

Rev. Paul P. McClure,
Catholic Universal Organization
116 F Street
Las Vegas, Nevada

George Murphy
5210 First Street N. W.
Washington, D. C.

Kenneth Nelson
2704 Wylie Avenue
Pittsburgh, Pennsylvania

William L. Patterson, Esq.
23 West 26th Street
New York 10, New York

Rev. John H. Philpot
680 N. 47th Street
Philadelphia, Pennsylvania

Willard Ransom, Esq.
824 N. California Street
Indianapolis, Indiana

Eslanda Goode Robeson
16 Jumel Terrace
New York 32, New York

Paul Robeson
16 Jumel Terrace
New York 32, New York

Rev. T. R. Royal
21323 Delford Street
Ferndale, Michigan

Rev. J. M. Royston
6141 South Parkway
Chicago 37, Illinois

C. Le Bron Simmons, Esq.
Detroit, Michigan

William C. Starke
6303 Cottage Grove
Chicago 37, Illinois

Rev. J. H. Sullivan
663 West 14th Place
Chicago 7, Illinois

Rev. Cornell E. Talley
Pittsburgh, Pennsylvania

T. Robert Washington
3837 Germantown Avenue
Philadelphia, Pennsylvania

Goldie E. Watson
2335 N. Cottage Street
Philadelphia, Pennsylvania

Appendix B.

August 1, 1956.

Hon. SIMON E. SOBELOFF
Solicitor General of the United States
Constitution Avenue, N. W.
Washington 25, D. C.

Dear Sir:

Re: *Claude Mack Lightfoot* vs. *U. S. A.*

In accordance with Rule 42 of the Revised Rules of the Supreme Court, I hereby request your consent to the filing of a brief *Amici Curiae* in behalf of a number of prominent Negro American citizens and others of divers political views. The nature of their interest can be put quite simply:

They believe that there are many issues in the *Lightfoot* case which bear vitally upon the Negro's search for that equalitarian dignity which is whole citizenship. Some of these issues are concerned with the continuity of the Negro's role in American political history. They are also extremely interested in the preservation of the letter and spirit of the First Amendment of the Constitution and the rights which it is intended to protect. Names and addresses of those who wish to act as *Amici* will be supplied if you so desire.

It is my belief that the provisions of Rule 2b would not be infringed by permission to file a Friend of the Court brief in behalf of representatives of America's Negro citizens. Mr. Lightfoot's counsel is extremely able and those vital points of law upon which the appeal must turn will doubtless be argued with great skill. But the proposed brief is concerned with the Negro's political alternatives in the light of his peculiar history. This is, both in emphasis

and frame of reference, quite different from any position taken by the appellant.

Because of the nation-wide interest among Negroes in the proposed brief, more time has been consumed than would be the case among Friends of the Court from the same area. It is therefore necessary that I ask, in conjunction with seeking your consent to filing that the time within which the proposed brief must be submitted be extended to the 10th day of September, 1956.

Very truly yours,

BRUCE MoM. WRIGHT,
of Counsel.

BMW:db

Appendix C.

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

[SEAL]

August 17, 1956.

BRUCE McM. WRIGHT, Esquire,
WEAVER, EVANS, WINGATE & WRIGHT,
160 Broadway,
New York 38, N. Y.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Dear Mr. Wright:—

Your letter of August 1, 1956, requests consent to the filing of a brief *amici curiae* "in behalf of representatives of America's Negro citizens." You state that the "proposed brief is concerned with the Negro's political alternatives in the light of his peculiar history", and attach a copy of the proposed brief which stresses the history of the Negro in this country since the Civil War.

In the circumstances, I feel that I must decline consent. The petitioner in this case is a Negro, but the issue is a general one which has nothing to do with race or color; in fact, the petitioner in the companion *Scales* case is white. In my view, the disposition of the case by the Supreme Court would not be aided at all by the brief you propose to file.

Sincerely yours,

J. LEE RANKIN
J. Lee Rankin,
Solicitor General.

Appendix D.

August 20, 1956

OFFICE OF THE SOLICITOR GENERAL
Constitution Avenue, N. W.
Washington 25, D. C.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Honorable Sir:

I am in receipt of your letter dated August 17, 1956, in which your refusal is noted to my request that you consent to the filing of a proposed *amici curiae* brief in behalf of several prominent Negro citizens.

You are entirely correct in your position that, although the petitioner is a Negro, "the issue is a general one which has nothing to do with race or color." However, I beg that you notice that many Negroes are disturbed by this case because Mr. Lightfoot was the first person convicted under the membership clause of the Smith Act and Mr. Scales, a white man, who stands similarly convicted, is a person whose work has been closely allied with the Negro's equalitarian cause. Thus, while I can quite agree that the theory of the Lightfoot and Scales appeals is general, the coast-to-coast feeling of many prominent Negro citizens is not. This, it seems to me, is the really important and basic factor to be considered in connection with the application for your consent. Who can say, for example, that the attitude of so many Negro leaders in their widespread communities will not have some effect upon the thinking of the Supreme Court. I submit that the attitudes of the Negro applicants here may be no less important than the psychological elements which the Court relied upon in unanimously deciding *Brown* v. *Board of Education*, 347 U. S. 483.

With this thought in mind, I respectfully ask that you be good enough to reconsider the denial of your consent to the filing of the proposed brief and consent thereto.

Very truly yours,

BRUCE MCM. WRIGHT.

Appendix E.

[SEAL]

OFFICE OF THE SOLICITOR GENERAL
WASHINGTON, D. C.

August 21, 1956

BRUCE McM. WRIGHT, Esquire
Weaver, Evans, Wingate & Wright
160 Broadway
New York 38, N. Y.

Re: *Lightfoot* v. *United States*, U. S. Supreme Court, October Term, 1956, No. 32.

Dear Mr. Wright:

I have your letter of August 20th, in which you ask that I reconsider my decision not to consent to the filing of a brief *amici curiae* in the above case. I have given serious consideration to the arguments you present but I am unable to change my decision. As you undoubtedly know, you may apply to the Court for permission to file your brief.

Sincerely yours,

J. LEE RANKIN
J. Lee Rankin,
Solicitor General.